

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

COMMENCEMENT TERM, 1912

No. 241

SOUTHERN LUMBER COMPANY, STEPHEN A. LA
RAUT, ALICE LA RAUT, ETHEL M. LA RAUT, AND EDWIN
LA RAUT, APPELLANTS,

THE UNITED STATES,

VERSUS
PETAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

FILED SEPTEMBER 12, 1912.

(20,540)

(23,850)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 258.

BOOTH-KELLY LUMBER COMPANY, STEPHEN A. LA
RAUT, ALICE LA RAUT, ETHEL M. LA RAUT, AND LUCY
LA RAUT, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

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a In the United States Circuit Court of Appeals, Ninth Circuit.

No. —.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA
Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, De-
fendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and
Appellant,

vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Appeal and Cross-Appeal from the United States District Court,
District of Oregon.

TRANSCRIPT OF RECORD.

b In the United States Circuit Court of Appeals, Ninth Circuit

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA
Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, De-
fendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and
Appellant,

vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Names and Addresses of Attorneys upon these Appeals:

For the Plaintiff: John McCourt, U. S. Attorney, Portland,
Oregon.

For the Defendants: A. H. Tanner, Portland, Oregon; Woodcock
& Smith, Eugene, Oregon.

1

[*Stipulation as to Record.*]

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, Appellant,

VS.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Appellees.

BOOTH-KELLY LUMBER COMPANY, Appellant,

VS.

UNITED STATES OF AMERICA, Appellee.

It is hereby stipulated by and between the plaintiff by the United States Attorney for the District of Oregon, and the defendant, Booth-Kelly Lumber Company, by its solicitors and counsel that the appeals of the respective parties herein may be heard on one transcript of the record to be made and printed herein, and that such transcript of the record on such appeal shall be made up of the following papers, to-wit:

2 All of the pleadings filed in said cause; the transcript of the testimony and evidence taken at the hearing, the same having been taken in writing by a Master and filed therein; the opinion of the court; the decree; the petition of the United States for appeal; its assignment of errors; the order allowing its appeal; the original citation on said appeal and proof of service thereof; the petition for appeal of the defendant, Booth-Kelly Lumber Company; the assignment of errors of the said defendant; the order allowing its appeal; the original citation on said defendant's appeal and proof of service thereon, and the undertaking on appeal of said defendant.

It is hereby agreed that the above mentioned papers constitute all of the record, proofs, entries and papers on file in said cause necessary for the hearing of said appeals.

It is further stipulated and agreed by and between the said parties that the original exhibits introduced in evidence in said cause may be omitted from the transcript herein, the same having been copied at length into the transcript of the evidence.

Dated at Portland, Oregon, this 26th day of June, 1912.

JOHN McCOURT,

United States Attorney for the District of Oregon.

ALBERT H. TANNER,

*Of Solicitors and Counsel for Booth-Kelly
Lumber Company.*

[Endorsed:] Filed June 26, 1912. A. M. Cannon, Clerk.

3 [*Order Enlarging Time to File Record.*]

In the District Court of the United States for the District of Oregon.

No. 3633, May 1, 1912.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; EDWARD JORDAN, Stephan La Raut, Alice La Raut, F. M. La Raut, and Lucy La Raut, Defendants.

Now, at this day, for good cause shown, it is Ordered that the plaintiff's and the defendants' time for printing the record and filing and docketing this cause, on the appeal of the plaintiff and the cross appeal of the defendants, in the United States Circuit Court of Appeals, Ninth Circuit, be, and the same is hereby, enlarged and extended 90 days from this date.

CHARLES E. WOLVERTON, *Judge.*

In the District Court of the United States for the District of Oregon.

Be it Remembered, that on the 24 day of May, 1910, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint in words and figures as follows, to-wit:

4 [*Complaint.*]

In the Circuit Court of the United States for the Ninth Judicial Circuit and District of Oregon.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

BOOTH-KELLY COMPANY, a Corporation; EDWARD JORDAN, STEPHEN La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

To the Judges of the Circuit Court of the United States of America for the Ninth Judicial Circuit and District of Oregon:

The United States of America, by the Attorney General, brings this bill of complaint against the Booth-Kelly Company, a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business at Eugene, Oregon, Edward Jordan of Coburg, Oregon, Stephan A. La Raut of Saginaw, Oregon, Alice La Raut of Saginaw, Oregon, Ethel M. La Raut of Saginaw, Oregon, and Lucy La Raut of Wilbur, Oregon, all citizens and inhabitants of the State of Oregon; and thereupon complains and shows unto your Honors:

I.

The Booth-Kelly Company was on and prior to the 14th day of February, 1902, ever since has been and still is, a corporation organized and existing under and by virtue of the laws of the State of Oregon.

5

II.

On or about the 14th day of February, 1902, the defendant, Edward Jordan, filed with the Register and Receiver of plaintiff's Land Office at Roseburg, Oregon, his Timber and Stone Lands—Sworn Statement, under the provisions of the Act of Congress of June 3, 1878, entitled, "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada, and in Washington Territory", as extended to all the Public Land States by the Act of Congress of August 4, 1892, for the purchase of Lots seven (7), eight (8), nine (9), and ten (10), of Section Two (2), in Township Twenty-two (22), South of Range Two (2), West of the Willamette Meridian. On the 7th day of May, 1902, the said Edward Jordan filed with and submitted to said Register and Receiver his proof, corroborated by the testimony of two witnesses, to establish his claim to said land, under the provisions of the Acts of Congress heretofore referred to, and under the rules and regulations of the plaintiff's General Land Office and Department of the Interior. On the date last mentioned, the said Edward Jordan paid to the said Receiver the sum of Four Hundred Dollars (\$400.00), being the full amount required by law for the purchase of said land. On the said 7th day of May, 1902, said Receiver issued to the said Edward Jordan his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Edward Jordan was entitled to receive plaintiff's patent for said land so entered and purchased.

6

On or about the 7th day of February, 1902, the defendant Stephen A. La Raut filed with the Register and Receiver of said Land Office his Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of the Northeast quarter (N. E. $\frac{1}{4}$) of Section Twenty-six (26), in Township Twenty-one (21), South, of Range Three (3), West of the Willamette Meridian. On the 7th day of May, 1902, the said Stephen A. La Raut filed with and submitted to said Register and Receiver his proof, corroborated by the testimony of two witnesses, to establish his claim to said land, under the provisions of said Acts of Congress and said rules and regulations. On the date last mentioned, the said Stephen A. La Raut paid to said Receiver the sum of Four Hundred Dollars (\$400.00), being the full amount required by law for the purchase of said land. On the said 7th day of May, 1902, said Receiver issued to the said Stephen A. La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Stephen A. La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 7th day of February, 1902, the defendant Alice

La Raut filed with the Register and Receiver of said Land Office her Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of the Southeast quarter (S. E. $\frac{1}{4}$), of Section Twenty-six, (26),
7 in Township Twenty-one, (21), South of Range Three (3), West of the Willamette Meridian. On the 7th day of May, 1902, the said Alice La Raut filed with and submitted to the said Register and Receiver her proof, corroborated by the testimony of two witnesses to establish her claim to said land, under the provisions of the said Acts of Congress and rules and regulations. On the date last mentioned the said Alice La Raut paid to said Receiver the sum of Four Hundred Dollars (\$400.00), being the full amount required by law for the purchase of said land. On the said 7th day of May, 1902, said Receiver issued to said Alice La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that said Alice La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 17th day of February, 1902, the defendant Ethel M. La Raut filed with the Register and Receiver of said Land Office her Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of Lots nine (9), ten (10), fifteen (15), and sixteen, (16), of Section Twenty-eight (28), in Township Twenty-one, (21), South, of Range Two, (2), West of the Willamette Meridian. On the 8th day of May, 1902, the said Ethel M. La Raut filed with and submitted to the said Register and Receiver her proof, corroborated by the testimony of two witnesses, to establish her claim to said land, under the provisions of the said Acts of Congress and rules and regulations. On the date last mentioned, the said
8 Ethel M. La Raut paid to said Receiver the sum of Four Hundred and Seven and 5.100 Dollars, (\$407.05), being the full amount required by law for the purchase of said land. On the said 8th day of May, 1902, said Receiver issued to said Ethel M. La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Ethel M. La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 17th day of February, 1902, the defendant Lucy La Raut filed with the Register and Receiver of said Land Office her Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of Lots one (1), two (2), seven, (7), and eight, (8), of Section Twenty-eight, (28), in Township Twenty-one, (21), South, of Range Two, (2), West of the Willamette Meridian. On the 8th day of May, 1902, the said Lucy La Raut filed with and submitted to the said Register and Receiver her proof, corroborated by the testimony of two witnesses, to establish her claim to said land, under the provisions of said Act of Congress and rules and regulations. On the same day said Lucy La Raut paid to said Receiver the sum of Four Hundred and Seven and 5.100 Dollars, (\$407.05),

being the full amount required by law for the purchase of said land. On the said 8th day of May, 1902, said Receiver issued to said Lucy La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Lucy La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

The said described lands are and were situate in the State of Oregon, and comprise in all eight hundred and five and sixty-four one-hundredths (805.64) acres, more or less, and on and prior to the 4th day of February, 1902, were lands of the plaintiff, belonging to its public domain and subject to entry and sale under the provisions of the Act of Congress of June 3, 1878, entitled, "An Act for the sale of Timber Lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by the Act of Congress of August 4, 1892, at plaintiff's Land Office at Roseburg, Oregon, and were and are timber lands of great value, to-wit, of the value of Ten Thousand Dollars, (\$10,000.00) and upwards.

Each of said entries and purchases was accomplished by filing with the Register and Receiver of said Land Office a "Timber and Stone Lands—Sworn Statement" to purchase the said land so therein embraced and divers affidavits and other documents and proofs in support thereof, and paying to the said Receiver the purchase price of the land so applied for, together with certain fees of said officials, all in the name of the person so making and filing such Timber and Stone Lands—Sworn Statement, and in manner and form as prescribed by the regulations of the plaintiff touching the procedure, proofs, and payments prescribed for the making of such entries and purchases, and immediately upon the making of each of said entries and purchases there was issued to the said person so making the same, the said Receiver's final receipt evidencing the payment of the purchase money therefor, and the said Register's final certificate evidencing the making of such entry and purchase.

III.

On or about the 3rd day of August, 1904, the plaintiff, by its five several patents of that date, issued in pursuance of said several final entries and purchases, conveyed to the said Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, respectively, the legal title to said respective parcel of land which each of them had so entered and purchased, as aforesaid, each of which said patents, the plaintiff is informed and believes, and so alleges, is now in the possession of the respective defendants to whom they were so issued.

IV.

The plaintiff avers that each and every one of the said entries was made wholly at the solicitation and by the procurement of the defendant, Booth-Kelly Company, acting by and through certain

of its officers, agents and hirelings, thereunto by the said defendant corporation authorized and directed; who in the interest of and by authority from the said defendant corporation prior to the several times when the said Timber and Stone Lands—Sworn Statements

were so made and filed and for the purpose of defrauding
11 the plaintiff of the title, possession and use of the said lands, and of procuring such title use and possession to become vested in the said defendant corporation, and therein of procuring for the said Booth-Kelly Company, indirectly and covertly, the lands herein involved, under the Acts of Congress heretofore referred to, fraudulently and corruptly conspired together to procure and hire each of the said entrymen for some small sum of the defendant corporation's money to be paid to him for his services therein, to make his said entry, as aforesaid, and thereupon convey the land so entered by him to the said defendant corporation; and each and every one of the said entrymen was in fact so procured and hired to make his said entry and purchase by some one or more of the said conspirators pursuant to the said conspiracy, and in making the same acted therein, not for his own use and benefit, but with the intent and pursuant to an understanding then existing between him and the person or persons so procuring his entry that the land when so entered and purchased should be conveyed by him to the defendant Booth-Kelly Company.

The entire expense attending the making of said entries and purchases, including the payment of the said purchase money and the said fees of the Register and Receiver and all other expenses and disbursements, was paid and borne by the said defendant corporation, and none of the said entrymen ever had any purpose or intention of entering or purchasing any of the said land for himself, or paid any money of his own, whether borrowed or

12 otherwise, for or on account of the said entry and purchase of the said land.

But the plaintiff alleges that in and by his aforesaid Timber and Stone Lands—Sworn Statement and the other affidavits, proofs, and documents filed with and submitted to the said Register and Receiver at and in the making of his said entry and purchase each of said entrymen stated and represented in writing and under oath to the plaintiff, and the said Register and Receiver and the officials in the plaintiff's General Land Office, whose duty it was to decide whether the said patents, or any thereof, might lawfully be issued, among other things, that he, such entryman, did not apply to purchase the said land on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said statements and representations the plaintiff avers, were and are, one and all, wholly false, fraudulent and untrue, and were made by the said respective entrymen, by procurement as aforesaid, for the purpose of deceiving the plaintiff and its officials,

and without any belief that such statements and representations, or any thereof, were true. The moneys paid, as aforesaid, at the said Land Office, by way of fees and in purchase of the said lands, were paid in the guise of moneys of the said respective entrymen, 13 and throughout the said Land Office proceedings the said applications, entries, and purchases were represented and in all things made to appear as the respective applications, entries, and purchases of the said entrymen in whose respective names they purported to be made, as aforesaid.

V.

The plaintiff's said officials believed and relied upon the said false and fraudulent representations, were deceived thereby and by said fraudulent devices and false appearances, and were at all times prior to the issuance of said patents in ignorance of the said conspiracy and of the aforesaid purpose and fraudulent character of the said entries and purchases, and because of such belief, reliance, deception and ignorance, and not otherwise, caused the said entries and purchases to be allowed and the said Receiver's receipts, Register's certificates, and patents to be issued in manner and form as hereinbefore alleged.

VI.

Some time after the said 7th day of May, 1902, the exact date being unknown to the plaintiff, the said Edward Jordan, by his certain deed conveyed the legal title to the land so entered and purchased by him, as aforesaid, to the defendant Booth-Kelly Company, which deed was thereafter placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 7th day of May, 1907, the said Stephen A. La Raut, by his certain deed of that date, conveyed the legal title to the land so entered and purchased by him, as aforesaid, to 14 the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 7th day of May, 1907, the said Alice La Raut by her certain deed of that date, conveyed the legal title to the land so entered and purchased by her, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed on record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 6th day of September, 1907, the said Ethel M. La Raut, by her certain deed of that date, conveyed the legal title to the land so entered and purchased by her, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 6th day of September, 1907, the said Lucy La Raut, by her certain deed of that date, conveyed the legal title to the land so entered and purchased by her, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

And the said defendant Booth-Kelly Company, under and by virtue of the said entries and purchases and the said patents subsequently issued, as aforesaid, and the said deeds, now falsely and fraudulently claims to be vested with full ownership in equity as well as at law in and to all and singular the said lands, so
15 entered, purchased and patented, and has entered into possession thereof, and now threatens and intends to cut and remove and convert to its own use the timber standing and growing thereon.

The plaintiff, however, avers that the said several conveyances by the said respective entrymen were made wholly in pursuance of their said several and unlawful understandings to that end existing at and prior to the several times when their respective entries and purchases were made, as aforesaid, and were solicited and directed by the said agents of the defendant Booth-Kelly Company acting in pursuance of the said conspiracy; that no consideration or considerations were paid to the said entrymen, or any of them, for or on account of their said respective conveyances, or any of them, save and except such moneys of the defendant corporation as were indirectly and secretly paid to them for and on account of their respective services in the making of the said entries and purchases, as aforesaid, as well as in the making of the said conveyances; and that the said defendant Booth-Kelly Company received and accepted said conveyances with full notice and knowledge of the aforesaid purpose and fraudulent character of the said entries and purchases, and in pursuance of the said unlawful and corrupt conspiracy.

All of which actions, doings, and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of the plaintiff in the premises.

In consideration whereof, and forasmuch as the plaintiff is
16 without full and adequate remedy in the premises save in a court of equity, and to the end that the said defendants, Booth-Kelly Company, Edward Jordan, Stephen A. La Raut, Alice La Raut Ethel M. La Raut and Lucy La Raut, may make full, true and direct answer to all and singular the matters and things hereinbefore set out as fully as if they had been particularly interrogated thereunto, but not under oath, their answers under oath being hereby expressly waived; and to the end that the said patents may be declared null and void, and be set aside, revoked and held for naught, and be delivered up and surrendered by the defendants, under the Court's command, for cancellation; and that the said several described deeds of conveyance may be declared fraudulent and void, and may in like manner be delivered up and surrendered for cancellation, and that all and singular the said described lands may be adjudged and decreed to be the perfect property of the plaintiff free and clear of all claims of the defendants; and that the defendant Booth-Kelly Company may be ordered, adjudged and decreed to execute and deliver to the plaintiff a good and sufficient deed or deeds conveying the said lands, free and clear of all liens, encumbrances, outstanding claims or clouds whatsoever, to the plaintiff in fee simple absolute; and that the defendant Booth-Kelly Company,

during the progress of this cause, and thereafter finally and perpetually may be enjoined from setting up any claim to the said lands, or any part thereof, from creating any cloud upon the plaintiff's title to the same or any part thereof, and from cutting, or removing, or converting to its own use any of the timber standing or growing thereon, or otherwise committing waste or damage thereto; and that the possession thereof may be restored to the plaintiff; and that the plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please your Honors to grant unto the plaintiff a writ of subpoena, to be directed to the said defendants, Booth-Kelly Company, Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut thereby commanding them and each of them at a time certain and under a certain penalty, therein to be limited to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises and to stand to, perform and abide by such orders, directions, and decrees as may be made against them and each of them in the premises, as shall seem meet and agreeable to equity.

GEO. W. WICKERSHAM,

Attorney General of the United States.

JOHN McCOURT,

United States Attorney for the District of Oregon.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, John McCourt, United States Attorney for the District of Oregon, being first duly sworn on oath say: That the facts set forth in the foregoing bill of complaint are true as I verily believe; that this affidavit is made upon reports furnished me by the duly authorized agent and officers of the General Land Office of the United States and upon affidavits made and furnished by the said officers, all of which reports and affidavits are in my possession.

JOHN McCOURT.

Subscribed and sworn to before me this 24th day of May, 1910.

[SEAL.]

VIVIAN FLEXNER,

Notary Public for Oregon.

[Endorsed:] Bill of Complaint. Filed May 24 1910. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 21 day of September, 1910, there was duly filed in said Court, an Answer in words and figures as follows to-wit:

[Answer.]

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BOOTH-KELLY LUMBER COMPANY, a Corporation; EDWARD JORDAN, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

19 Answer of Defendants, The Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, to the Bill of Complaint.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or might be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say:

I.

These defendants admit that the Booth-Kelly Lumber Company, sued herein as the "Booth-Kelly Company," was on and prior to the 14th day of February, 1902, and ever since has been and still is a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal offices and place of business at Eugene, in the State of Oregon.

II.

These defendants admit all the allegations contained in the second paragraph of said bill of complaint to be true as therein alleged.

III.

These defendants admit all of the allegations contained in the third paragraph of the bill of complaint to be true as therein alleged.

20

IV.

These defendants deny that each or any one of said entries was made wholly or at all at the solicitation, or by the procurement of defendant Booth-Kelly Lumber Company, acting by or through certain or any of its officers, agents or hirelings thereto, by the said defendant corporation authorized or directed, or otherwise or at all, or that they, or any of them, in the interest of or by authority from the said defendant corporation, prior to the several times when the said Timber and Stone Lands Sworn Statements were taken, made or filed, or at any other time or at all, or for the purpose of defrauding the plaintiff of the title, possession or use of said lands, or

of procuring such title, use or possession to become vested in the said defendant corporation, or of procuring for the said Booth-Kelly Lumber Company, indirectly or covertly, or otherwise or at all, the lands involved in this suit, under the said Acts of Congress referred to in said bill of complaint, or otherwise or at all, or that these defendants or any of them fraudulently or corruptly, or otherwise or at all, conspired together to procure or hire each of said entrymen for some small sum, or any sum, of defendant corporation's money to be paid to him for his services therein, or otherwise or at all, to make the said entry as aforesaid, or otherwise or at all, or thereupon convey the land so entered by him to the said defendant corporation, or that each or every one of said entrymen or any of said entrymen, were in fact so procured or hired to make said entry or purchase by some one or more of said or any conspirators,

21 pursuant to the said or any conspiracy, or in making the same, or otherwise or at all, acted therein, not for his own use or benefit, or with the intent, or pursuant to an understanding or any understanding then or at all, or at any time existing between him or the person or persons so procuring his entry, that the land, when so entered and purchased should be conveyed by him to the defendant, Booth-Kelly Lumber Company, or otherwise or at all.

These defendants deny that the entire or any expense attending the making of said entries or purchase, including the payment of said purchase money, or the said fees of register or receiver, or all other expenses or disbursements, or any expenses or disbursements, were paid or borne by the said defendant corporation, or that none of said entrymen ever had any intention of entering or purchasing any of said land for himself or paid any money of his own, whether borrowed or otherwise, for or on account of said entry, or the purchase of said land.

V.

These defendants admit that in and by the aforesaid Timber and Stone Lands Sworn Statement, and the other affidavits, proofs and documents filed with and submitted to the said Register and Receiver, at and in the making of said entry and purchase, each of said entrymen stated and represented in writing and under oath to the plaintiff and the said Register and Receiver, and the officials in the plaintiff's General Land Office, whose duty it was to decide whether the said patents or any of them might lawfully be issued, 22 among other things, that he, such entryman, did not apply, to purchase the said land on speculation, but in good faith, to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title he might acquire from the Government of the United States might inure, in whole or in part, to the benefit of any person except himself. But these defendants and each of them do deny that the said statements or representations or any of them, were or are wholly or at all false, fraudulent or untrue, or were made by the said respective entrymen or any of them by procurement as aforesaid

or otherwise, for the purpose of deceiving the plaintiff or its officials, or without belief that such statements or representations, or any of them, were true, and they deny that the money paid at the said Land Office by way of fees, or for the purchase of said lands, or any part thereof, were paid in the guise of moneys of the respective entrymen, or that throughout the said Land Office proceedings, the said applications, entries or purchases were represented or in all things made to appear as respective application-, entries or purchases of said entrymen, in whose respective names they purported to be made, as aforesaid, or otherwise or at all, except as the bona fide applications, entries and purchases of the said several entrymen.

These defendants deny that the plaintiff's said officials, or any of them, believed or relied upon the said or any false or fraudulent representations, or were deceived thereby, or by said or any fraudulent device or false appearances, or otherwise or at all, or were at any time prior to the issuance of said patents in ignorance of said conspiracy, or of the aforesaid purpose or fraudulent character of said entries and purchases, or because of such belief, reliance, deception or ignorance, and not otherwise, caused the said entries and purchases to be allowed, and the said Receiver's receipt, Register's certificates and patents to be issued, in manner and form as in said bill alleged, or otherwise or at all.

VI.

These defendants admit that on the 22nd day of July, 1902, the said Edward Jordan, by his deed duly conveyed the legal title to the land so entered and purchased by him to the defendant, the Booth-Kelly Lumber Company, which deed was thereafter placed of record in the office of the Recorder of Deeds of Lane County, Oregon, and they admit that on or about the 7th day of May, 1907, the others of the said entrymen, to-wit, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, by their deeds of that date conveyed the legal title to the land so entered and purchased by them as aforesaid, to the defendant Booth-Kelly Lumber Company, which deeds were afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon, as alleged in the said bill of complaint, and that all of the said deeds except the one from Edward Jordan were made to the said defendant, Booth-Kelly Lumber Company, after the patents had issued to said entrymen for said land.

24 These defendants admit that the said defendant Booth-Kelly Lumber Company, under and by virtue of said entries and purchases, and the patents issued for said land as aforesaid, and the said deeds, now claims to be and is vested with the full ownership in equity as well as at law, in and to all and singular the said lands so entered, purchased and patented, and has entered into the possession thereof as such owner, but these defendants deny that said claim of ownership was or is falsely or fraudulently made, or otherwise than in good faith, and in pursuance of the bona fide purchase of said land from said entrymen, as hereinafter alleged; and they deny that the said defendant, Booth-Kelly Lum-

ber Company, now threatens to cut or remove or convert to its own use the timber growing or standing upon *sale* land, or any part thereof.

These defendants deny that the several conveyances by the said respective entrymen, or any one of them, were made wholly or at all in pursuance of their said several or unlawful understandings or any understanding to the end, existing at or prior to the several times when their respective entries or purchases were made as aforesaid, or otherwise or at all, or were solicited or directed by the said agents, or any agents, of defendant Booth-Kelly Lumber Company, acting in pursuance of said or any conspiracy, and they deny that no consideration or considerations were paid to the said entrymen or any of them, for or on account of said respective conveyances or any

25 of them save or except such moneys of defendant corporation as were indirectly or secretly or otherwise paid to them for or on account of their respective or any services, in the making of an entry or purchase, as aforesaid, as well as in the making of said conveyances, or otherwise or at all, or that the said defendant, Booth-Kelly Lumber Company, received or accepted said conveyances or any of them with full or any knowledge of the aforesaid purpose or fraudulent character of said entries or purchases, or in pursuance of said unlawful or corrupt conspiracy, or any conspiracy whatsoever.

And the Defendant, the Booth-Kelly Lumber Company, further answering the said Bill of Complaint, alleges:

I.

That this defendant is informed and believes, and therefore alleges that after the said several entries mentioned in said bill were made by said several entrymen, charges were made and filed with the complainant's officials in the Interior Department whose duty it was to investigate and determine the same, that said entries were fraudulent in character, and were made for the benefit of this defendant, and that said charges were fully investigated by the Interior Department for the purpose of ascertaining the truth or falsity of said charges, and to determine whether patents should be issued upon said entries, or whether the same should be cancelled and that such proceedings were had in said matters that said several entries were fully investigated, by complainant's officials charged

26 with that duty, and testimony and affidavits were taken upon said investigation, and the complainant and said entrymen were duly represented at said hearing and investigation, and that upon a full investigation and hearing upon said charges, and with full knowledge of all the facts, it was found and determined by the said officials that said entries were not fraudulent, and that the irregularities in said entries, if any, were not of sufficient gravity to require or justify the cancellation of said entries, and ordered that patents issue upon said entries for said land, and that patents were thereupon issued therefor, as alleged in said bill of complaint.

That said officials were given by law and had full jurisdiction to

hear and determine all of the said charges and matters mentioned in the said bill of complaint, and in this answer, and that their decision and determination thereof, as hereinbefore alleged, was and is final and conclusive, and this defendant pleads the same in bar of this suit.

And for further answer to said bill of complaint, the defendant the Booth-Kelly Lumber Company, alleges that on the 22nd day of July, 1902, the said Edward Jordan had become and was the equitable owner of the said land entered and purchased by him, by virtue of his purchase thereof, and the Receiver's Final Receipt issued to him therefor, and that all of the proceedings set forth in the said bill of complaint as having been done and taken in procuring the issuance of said Final Receipt for said land, and as described therein, were regular, legal and valid upon their face, and

27 appeared upon their face to have been duly and regularly done and taken, in conformity with the laws of the United States, and rules and regulations of the Interior Department relating thereto, and in compliance therewith.

That on or about the said 22nd day of July, 1902, this defendant purchased the said land so entered by the said Edward Jordan from the said Edward Jordan for the sum of about \$550.00, which was actually advanced and paid to and for his use and benefit, and received a warranty deed from him therefor, relying upon the said Final Receipt for said land, and believing that all the proceedings anterior thereto were bona fide, true and genuine in all respects, and relying upon the determination made by the land officers of the complainant, in issuing the said Final Receipt, and that on the 3rd day of August, 1904, a patent was duly issued to said Edward Jordan for said land, in pursuance of said entry, final receipt and purchase, as alleged in the said bill of complaint.

That on the 7th day of May, 1907, the said defendants, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, by virtue of the several patents issued to them as set forth in the said bill of complaint, had become and were seized and possessed of the full legal and equitable ownership of said land granted by said patents, and that all the proceedings set forth in said bill of complaint as having been done and taken in procuring the issuance of said patents for said land described in the said bill of complaint, and as set forth therein, were regular, legal and valid upon their face, and appeared upon their face to have been duly and

28 regularly done and taken in conformity with law and the rules and regulations of the Interior Department, of the complainant, relating thereto, and in compliance therewith.

That on the said 7th day of May, 1907, this defendant purchased the said land described in said bill of complaint, as having been patented to said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, from them for the sum of about \$600.00, advanced and paid to and for their use and benefit for each of said claims, respectively, which said sum was actually advanced and paid to and for each of them by this defendant therefor, relying upon the patents of the United States, complainant herein, for

said land, and believing that all the proceedings anterior thereto were bona fide, true and genuine in all respects, and relying upon the determination made by the land officers of the complainant in issuing the patents for said land and on the said 7th day of May, 1907, the said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, executed and delivered to this defendant for the consideration aforesaid, good and sufficient warranty deeds for said land, duly and legally conveying the same to this defendant.

And this defendant alleges that the said several sums of money so paid and advanced to and for the said several entrymen mentioned in said bill of complaint, by this defendant, as hereinbefore alleged, were paid by this defendant truly and bona fide, and without any notice prior thereto or prior to the issuance of said
29 patents or the delivery of said deeds therefor to this defendant, of any of the pretended fraudulent acts, representations or statements or things in the said bill of complaint set forth, and without any reason to believe or suspect that there had been any fraud or misrepresentations of any kind whatever, in any of the matters, proceedings or doings of any one leading up to and including the issuance of said patents for said land, or that all or any of said matters, proceedings and doings had not been wholly, reasonably, properly and truthfully done and completed, in accordance with the laws of the United States, and rules and regulations of the Interior Department of the complainant, relating thereto, and therefore this defendant alleges that it was and is a bona fide purchaser of the said land for the full value thereof, and without any notice of any of the misrepresentations, frauds or statements set forth in the said bill of complaint.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged by the said bill of complaint, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct; and humbly pray to be hence dismissed
30 with the reasonable costs and charges in this behalf most wrongfully sustained.

WOODCOCK & SMITH AND
ALBERT H. TANNER,

*Solicitor for Defendants Booth-Kelly Lumber
Company, Stephen A. La Raut, Alice La
Raut, Ethel M. La Raut, and Lucy La Raut.*

UNITED STATES OF AMERICA,
State of Oregon, County of Multnomah:

I, A. C. Dixon, being first duly sworn say: that I am the manager of the Booth-Kelly Lumber Company, one of the defendants

above named, and have heard the foregoing answer read, and know the contents thereof, and that the same is true as I verily believe.

A. C. DIXON.

Subscribed and sworn to before me this 17 day of September, 1910.

[SEAL.]

MALID H. HENRY,
Notary Public for Oregon.

[Endorsed:] Answer. Filed September 21, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on the 11 day of November, 1910, there was duly filed in said Court, a *a* replication in words and figures as follows to wit:

31 [Reply.]

In the Circuit Court of the United States, for the District of Oregon.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

THE BOOTH-KELLY LUMBER COMPANY, a Corporation; EDWARD Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

The Replication of the Plaintiff in the Above-entitled Cause to the Answer of Defendants The Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, to the Bill of Complaint.

This repliant, by John McCourt, United States Attorney in and for the District of Oregon, saving and reserving all advantage of exception to the manifold insufficiencies of said answer, for replication thereto, saith:

That it will aver and prove its said bill to be true and sufficient and that the said answer is untrue and insufficient.

Wherefore, Repliant prays relief as in said bill it hath already prayed.

JOHN MCCOURT,
United States Attorney.

[Endorsed:] Replication. Filed Nov. 11, 1910. G. H. Marsh, Clerk, District of Oregon.

32 And afterwards, to wit, on Thursday, the 17 day of November, 1910, the same being the 40 Judicial day of the Regular October Term of said Court; Present: the Honorable Chas. E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

[*Order Referring Cause to Examiner.*]

In the Circuit Court of the United States for the District of Oregon.

No. 3633.

THE UNITED STATES OF AMERICA

VS.

BOOTH-KELLY LUMBER COMPANY.

November 17, 1910.

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and states to the Court that the plaintiff above named desires the testimony to be adduced in this cause be taken orally, and moves the Court for an order referring this cause to George A. Brodie, the Standing Examiner of this Court; it is, therefore, ordered that this cause be, and the same is hereby, referred to George A. Brodie, the Standing Examiner of this Court, to take and report to the Court the testimony to be offered in this cause by either of the parties hereto.

And afterwards, to wit, on the 19 day of September, 1910, there was duly filed in said Court, a Stipulation in words and figures as follows to-wit:

33

[*Stipulation in Amendment of Answer.*]

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

THE BOOTH-KELLY LUMBER COMPANY, a Corporation; EDWARD Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

It is hereby stipulated and agreed between the plaintiff and the defendants, the Booth-Kelly Lumber Company and Ethel M. La Raut and Lucy La Raut, by their respective attorneys, that the answer heretofore filed by them in the above entitled cause may be considered and treated as amended in the following particulars, to-wit:

1. So as to admit that the defendant the Booth-Kelly Lumber Co. is the holder of the legal title to the lands entered by and patented to Ethel M. La Raut and Lucy La Raut, but denying that it is the equitable owner of said land, and alleging affirmatively that said Ethel M. La Raut, now Ethel M. Lewis, and Lucy La Raut ever since said patents were issued to them have been and now are the equitable owners of said land, and that the deeds made by them to the Booth-Kelly Lumber Company were intended to be and were

in fact mortgages, to secure the payment of certain advances made
and to be made to them by said company, to enable them
34 to enter and pay for said land, and for other purposes.

2. Omitting and striking out from said answer the further
and separate defense set up in the plea of bona fide purchase on the
part of the defendant, Booth-Kelly Lumber Company, as to the
said lands entered and patented to Ethel M. La Raut and Lucy La
Raut.

And that as so amended, said answer shall stand as the answer
of said defendants, without the filing of a formal amended answer
to that effect, unless the Court shall order such amended answer to
be filed.

JOHN McCOURT,
Attorney for Plaintiff.
WOODCOCK & SMITH AND
A. H. TANNER.
Attorneys for Defendant.

[Endorsed:] Filed December 19, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on Wednesday, the 19 day of July, 1911,
the same being the 85 Judicial day of the Regular April Term of
said Court; Present; the Honorable R. S. Bean, United States Dis-
trict Judge presiding, the following proceedings were had in said
cause, to-wit:

[Record of Trial—Final Hearing.]

In the Circuit Court of the United States for the District of Oregon.

No. 3633.

THE UNITED STATES OF AMERICA
vs.

BOOTH-KELLY LUMBER COMPANY et al.

35 July 19, 1911.

Now, at this day, come the plaintiff by Mr. John McCourt,
United States Attorney, and the defendants by Mr. A. C. Woodcock
and Mr. A. H. Tanner, of counsel; Whereupon, this cause comes on
for final hearing upon the pleadings and the proofs herein. And
the Court having heard the arguments of counsel, will advise
thereof.

And afterwards, to wit, on the 9th day of October, 1911, there
was duly filed in said Court, an Opinion in words and figures as
follows to-wit:

[*Opinion of the Court.*]

In the Circuit Court of the United States, for the District of Oregon.

No. 3633.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE BOOTH-KELLY COMPANY, a Corporation; Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, John McCourt, U. S. Attorney, for Government.

John McCourt, U. S. Attorney, for Government.

Albert H. Tanner, Attorney for Defendants.

BEAN, *District Judge*:

This suit is brought by the government to cancel five patents for public lands issued to as many patentees under the Timber & Stone Act on the ground that the initial applications were made
36 by the applicants for the use and benefit of the defendant and under an agreement that they should convey the land to it. The defendant company denies the fraud charged and affirmatively pleads that it is the owner by purchase in good faith of three of the claims in controversy and that it holds the legal title to the other two as security for moneys advanced.

Whatever may have been the purpose of Congress in passing the Timber & Stone Act, or whatever uncertainty there may have been originally in its construction or its scope and effect as regards an entryman and his right to sell and transfer the land entered or about to be entered by him, it is now settled that all the statute denounces is a previous arrangement or agreement by which the land entered shall inure to the benefit of another, or in other words, the acting for another in the application. It therefore prohibits the making of contracts, express or implied, before or at the time of application to purchase whereby the entryman is to convey the title which he shall acquire from the government to some other person or, in short, from entering land ostensibly for himself but in reality for another, but it does not prohibit one who has applied for the purchase of land in good faith from selling or agreeing to sell the same to another after the application and before final proof, or from borrowing money from another with which to pay the purchase price. U. S. v. Budd, 144 U. S. 154; U. S. vs. Williamson, 207 U. S. 405; U. S. vs. Biggs, 211 U. S. 507. And under the rule in these cases, there
37 is no inhibition against one intending in good faith to enter land for himself from making arrangements in advance of his application to borrow the money with which to pay the expenses and purchase price. The inquiry at hand is therefore directed to the sole question whether there was an agreement between the entrymen and the defendant company prior to the entry, by

which the land should inure to the benefit of the latter. Patent has been issued, and it must be presumed that the intent of the entrymen was innocent and that the entries were made in good faith for their own use and benefit as stated in their applications. The burden is on the government to overcome this presumption by clear and convincing proof. Mere inference or conjecture or suspicion is not enough and especially in a case like the one at bar where, if the particular wrong charged be established, the money paid for the land will be forfeited to the government, for in such case, as said by Mr. Justice Brewer in *U. S. vs. Budd*, *supra*, it is "imperative that no decree should be passed against the defendants unless the wrong be clearly and fully established."

Now, so far as the four La Raut claims are concerned, there is no direct testimony to support the averments of the bill. Indeed it is all to the contrary, and to the effect that the entries were made for the exclusive use and benefit of the entrymen and that there was no agreement, express or implied, that the land should be conveyed to the defendant company, or that the entrymen made the entries in reality for such company, or any other person. The circumstances

relied upon by the government to overcome this testimony
38 are the facts that the land had been cruised by the company prior to the entry, and was shown the entrymen by an employe of the defendant. The money with which to pay the expenses attending the entry and the purchase price was furnished by the company, and it paid each entryman an additional \$100.00 a short time thereafter. All the moneys paid out in the matter were charged by the bookkeeper to its Stumpage Account. Deeds were subsequently made by the entrymen to the defendant, and it has exercised dominion over the property and paid the expenses thereon. But this is explained by undisputed testimony. The La Rauts are relatives of Mr. Booth, who was the manager of the company at the time the filings were made. They were poor and had no means of their own, but like many others at that time were anxious to secure lands under the Timber & Stone Act. Miss Ethel, on behalf of herself and the others, asked Mr. Booth for his assistance and he told her that if he should learn of suitable claims open to entry he would advise them and would advance the money necessary to pay the purchase price and expenses. He was subsequently informed through reports of cruisers employed by his company of several claims open to entry and he thereupon informed the La Rauts and directed the defendant's bookkeeper to attend to the matter for him, paying the expenses, keeping a proper record thereof so that the actual amounts advanced to each applicant could be ascertained and determined. Mr. Booth guaranteed the repayment of the

money to the company and after final proof took deeds to
39 the lands to himself, as security therefor. Some time thereafter, when he resigned as manager he explained the matter to his successor and it was agreed that the company should carry the loans and consequently the deeds to Booth were destroyed and new ones made to the defendant as security. Subsequently Stephen A. La Raut and wife, desiring to move to Canada, offered to sell

their claims to the defendant company and after some negotiations they were purchased by Mr. Kelly, the then manager, at a price satisfactory to them, and the land conveyed to it. The other claims still belong to Ethel and Lucy La Raut, the company holding title as security. The fact that the money was advanced by the company and the manner in which the books were kept, as well as the circumstances surrounding the entry, are suspicious and, standing alone, tend strongly to support the government's contention, but with the explanation given by the witnesses they are not sufficient to overcome the respect due to the patents or the presumption which attended their issuance.

The Jordan claim stands on a different footing. Jordan testifies that at the time of his entry he was an employe of the defendant company at Coburg. That Mr. Kelly, the defendant's vice-president and purchasing agent, called him on the telephone and asked him if he did not want to take a timber claim for him. That he (Jordan) went to Eugene in response to the message and saw Mr. Kelly, and it was then agreed that he should take a claim as selected or show him
an agent of the company, and that it should furnish the
40 money necessary to pay the purchase price and all expenses attending the entry and pay him \$100.00 for his trouble.

That in pursuance of this arrangement, he was furnished a description of the land by Mr. Kelly and told who would show him the land. After examining the land, he filed on it and subsequently made the required proof. The defendant paid all the expenses and the purchase price, arranged to furnish the proof witnesses, attended to the advertising and all business connected with the entry and as soon as final proof Jordan delivered the receipt to Kelly. Shortly thereafter Kelly brought over to Coburg a deed conveying the land to the defendant company and he (Jordan) signed it and Kelly paid him the \$100.00, less \$35.00 which was owing from him to Kelly. That he took the land not for his own use and benefit but for the defendant company. His testimony in this respect is confirmed by the entries in the books and the circumstances attending the entry. Mr. Kelly says there is no previous arrangement between himself and Jordan by which the land should be conveyed to the company. He admits, however, that Jordan filed on the land in pursuance of telephone message from him and that before doing so Jordan asked him what he was to get out of it and he says that he explained that he could not make any agreement at that time as it was against the law. It maybe and I think it is quite probable that there was no agreement in express terms between Jordan and Kelly that the land should be entered for the defendant, but the entire circumstances, together with
Jordan's testimony, leave it practically unquestioned that
41 whether such an agreement was made or not, Jordan understood that the land was not to be taken for himself but for the defendant and that such was the understanding of Kelly.

It follows therefore that a decree should be entered cancelling the Jordan patent but the bill will be dismissed as to the four La Raut patents.

[Endorsed]: Filed October 9, 1911. G. H. Marsh, Clerk.

And afterwards, to wit, on the 9 day of October, 1911, there was duly filed in said Court, a Decree in words and figures as follows to-wit:

[Decree.]

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

THE BOOTH-KELLY LUMBER COMPANY, a Corporation; Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

This cause came on regularly for trial before the Court, upon the testimony taken and reported to the Court by the examiner, and the exhibits and the pleadings in said cause, the plaintiff appearing by

Mr. John McCourt, United States Attorney for Oregon, and
42 said defendants the Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut appearing by Mr. A. C. Woodcock and Mr. A. H. Tanner, their attorneys, and Edward Jordan not appearing, a decree being taken against him pro confesso, and having duly considered the evidence and exhibits, and arguments of the counsel, and the Court being now fully advised in the premises:

It is Ordered, Adjudged and Decreed by the Court that the patent heretofore, to-wit, on the 3rd day of August, 1904, issued to Edward Jordan, for lots 7, 8, 9 and 10 of Section 2, in Township 22 South of Range 2 West, of the Willamette Meridian, and the deed from said Edward Jordan and wife to the said Booth-Kelly Lumber Company to the said land, which said patent and deed are particularly mentioned and referred to in the plaintiff's Bill of Complaint, be and the same are hereby set aside, cancelled and held for naught, and that said plaintiff herein be and it is hereby decreed to be the owner of said real property, free and clear of all claims of the said defendants, and that the said defendant the Booth-Kelly Lumber Company execute and deliver to the plaintiff a good and sufficient deed conveying the said land to the plaintiff in fee simple absolute, and that in case it shall fail, neglect or refuse to make such deed that this decree shall operate as such deed of conveyance.

It is further ordered, adjudged and decreed by the Court that the plaintiff is not entitled to any relief in this suit against any of the said defendants as to the said patents issued to the said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy
43 La Raut, particularly mentioned and set forth in the plaintiff's Bill of Complaint, or as to the said lands therein described, and that the plaintiff's complaint as to said lands be and the same is hereby dismissed.

It is further ordered, adjudged and decreed by the Court that neither of the parties to this suit shall recover costs or disbursements from the other.

R. S. BEAN, Judge.

[Endorsed]: Filed Oct. 19, 1911. G. H. Marsh, Clerk, by J. W. Marsh, Deputy.

And afterwards, to wit, on the 10 day of March, 1911, there was duly filed in said Court, testimony taken before Examiner, Geo. A. Brodie, in words and figures as follows to wit:

[*Testimony and Exhibits.*]

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendant.

44 STATE OF OREGON,
County of Multnomah, ss:

On this 19th day of December, 1910, at the hour of 1:30 o'clock, P. M., the parties herein appeared before George A. Brodie, Examiner of the above entitled Court, at the Grand Jury Room of said Circuit Court, in the City of Portland, Multnomah County, State of Oregon. The government appearing by Mr. John McCourt, District Attorney, and the defendants appearing by Messrs. A. H. Tanner and A. C. Woodcock, and thereupon, the following proceedings were had, to-wit:

Counsel for the government of the United States, offers in evidence, certified copies of the entry papers, including final proof papers, covering the entry of Edward Jordan, for lots 7, 8, 9 and 10, in Section 2, Township 22, South of Range 2, West of Willamette Meridian;—being the proceedings of all of the entries involved in this case, and upon which it is sought to set aside the patent thereto, and there being no objection, the same is received and filed, marked Plaintiff's Exhibit "A", and is in words and figures, as follows, to-wit:

Department of the Interior.

General Land Office.

WASHINGTON, D. C., May 6, 1910.

I hereby certify that the annexed copies are true and literal exemplifications of the originals in the file of this office.

45 In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.]

JOHN O'CONNELL,
Acting Recorder of the General Land Office.

Edward Jordan.

12124-1.

STATE OF OREGON,
County of Lane, ss:

I, C. J. Howard, being first duly sworn, say that I am the Foreman of Bohemia Nugget. That said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and state. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times; the first on the 28th day of February, 1902, and the last on the 2nd day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper during said period and time of publication, and that the said notice was published in a newspaper proper and not in a Supplement.

C. J. HOWARD.

Subscribed and sworn to before me this 2nd day of May, 1902.
— — —, N. P.

46

Notice of Publication.

United States Land Office.

ROSEBURG, OREGON, Feb. 14, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Edward Jordan, of Coburg, County of Lane, State of Oregon, has this day filed in this office, his sworn statement No. 2039, for the purchase of lots 7, 8, 9 and 10, of Section 2, Township 22, South of Range 2 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Thomas Roache, of Eugene, Oregon, Dan Brumbaugh, of Coburg, Oregon, Oscar Lee, John Palmer, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES, *Register.*

12124-2.

Timber Land, Act June 3, 1878.

Notice for Publication.

United States Land Office.

Nugget.

ROSEBURG, OREGON, Feb. 14, 1902.

47 Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892.

Edward Jordan, of (town) or City Coburg, county of Lane, State (or Territory) of Oregon, has this day filed in this office his sworn statement No. 2039, for the purchase of the Lots 7, 8, 9 and 10, of Section No. 2, Township 22, South of Range 2 W., and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Thomas Roche, of Eugene, Oregon.

Dan Brumbaugh, of Cottage Grove, Oregon.

Oscar Lee, of Cottage Grove, Oregon.

John Palmer, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES, *Register.*

48 This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

Certificate As to Posting of Notice.

United States Land Office.

ROSEBURG, OREGON, May 7, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over. I have first posted the same on the 14th day of Feb. 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES, *Register.*

12124-3.

(This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.)

Timber and Stone Lands.

Sworn Statement.

(To be made in duplicate.)

Land Office at Roseburg, Oregon.

Date, February 14, 1902.

I, Edward Jordan, of (town or city) Coburg, county of Lane, State (or Territory) of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory" as extended to all the Public

49 Land States by Act of August 4, 1892, for the purchase of the Lots 7, 8, 9, and 10, of Section 2, Township No. 22, South of Range, 2 W. in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born citizen of the United States of the age of 27 years, and by occupation working man, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited, that it contains no mining or other improvement nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement, or contract or in any way or manner, with any person, or persons who-soever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Coburg, Oregon.

EDWARD JORDAN.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known or has been satisfactorily identified before me by ———, and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 14th day of February, 1902.

50

J. T. BRIDGES, *Register*.

NOTE.—Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for

the land is forfeited, and all conveyances of the land or of any right, title, or claim thereto are absolutely null and void, as against the United States.

In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

12124-4.

Non-mineral Affidavit.

(The affidavit can *only* be sworn to only on personal knowledge and cannot be made on information or belief.

The non-mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavit required of the entryman.)

Department of the Interior.

United States Land Office.

ROSEBURG, OREGON, May 7, 1902.

Edward Jordan, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for
51 Government title to the Lots 7, 8, 9 and 10, Sec. 2, Tp. 22, S. R., West; that he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein, or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year, by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for timber purposes, and that his post-office address is Coburg, Oregon.

EDWARD JORDAN.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a

creditable person and the eprson he represents himself to be, andn
 that this affidavit was subscribed and sworn to before me
 52 at my office in Roseburg, Oregon, within the Roseburg,
 Oregon land district, on this 7th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Revised Statutes of the United States, Title LXX, Crimes, Chp. 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, or certificate by him subscribed is true, willfully and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750).

12124-5.

53 (The Testimony of two witnesses in this form, taken separately, required in each case.)

Testimony of Witness under LActs of June 3, 1878, and August, 4, 1892.

DAN BRUMBAUGH, being called as a witness in support of the application of Edward Jordan, to purchase the Lots 7, 8, 9 and 10, of Section 2, Township 22, South of Range, 3 West, testifies as follows:

Question 1. What is your age, post-office address and where do you reside?

Answer. 36 years, Cottage Grove, Oregon, and I reside there.

Ques. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was over the land a number of times and the last Feb. 13, 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is too steep and rocky.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state

54 what they are, and whether the springs or mineral deposits are valuable.

Ans. Nothing that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because it is mostly all timber.

Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any persons except himself?

Ans. He has not to my knowledge.

Ques. 11. Are you in any way interested in this application or in the land above described, or the timber or stone salines, mines, or other improvements of any description whatever thereon?

Ans. No.

DAN BRUMBAUCH.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto. And that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES, *Register*.

55 NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following Section of the Revised Statutes and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chap. 1.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or persons in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose, or certify truly or that written testimony, declaration, deposition, or certificate by him subscribed *as true*, willfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand

dollars and by imprisonment *and* hard labor not more than five years and shall moreover thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

(See Sec. 1750.)

12124-6.

(The testimony of two witnesses, in this form taken separately required in each case.)

Testimony of Witness under Acts of June 3, 1878, and August 4, 1892.

THOMAS ROACHE, being called as a witness in support of the application — Edward Jordan, to purchase the Lots 7, 8, 9, and 10, of Section 2, Township 22, South of Range 2 West, testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 46 years, Eugene, Oregon, and I reside there.

Q. 2. Are you acquainted with the land above described? By personal inspection of each of its smallest legal sub-divisions?

A. I am.

Q. 3. When and in what manner was such inspection made?

A. I was over the land Feb. 13, 1902.

Q. 4. Is it occupied or are there any improvements on it not made for ditch or canal purposes, or which were made by or do not belong to the said applicant?

A. No.

Q. 5. Is it fit for cultivation?

A. No.

Q. 6. What causes render it unfit for cultivation?

A. It is too rough, very hilly and stony.

Q. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the spring or mineral deposits are valuable.

A. Nothing that we could see.

Q. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon? Or is it chiefly valuable for timber and stone.

A. Chiefly valuable for timber.

Q. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. It is the only thing of value on the land that I could see.

57 Q. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner or with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any persons except himself?

A. Has not to my knowledge.

Q. 11. Are you in any way interested in this application, or in the lands above described, or the timber, or stone, salines, mines, or improvements of any description whatever thereon?

A. No.

THOMAS ROACHE.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of Revised Statutes, and state to him that it is the purpose of the Government if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chapter 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which
58 a law of the United States authorizes an oath to be administered that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

(The Testimony of Claimant and Witness must be taken at the same time and before the Register and Receiver of the land district in which the land is situated.)

Timber and Stone Lands.

Testimony of Claimant.

EDWARD JORDAN, being called as a witness in support of his application to purchase the Lots 7, 8, 9, and 10, of Section 2, Township 22 S. Range, 2 West, testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 27 years, Coburg, Oregon, and I reside there.

Q. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

A. I am; was born in Oregon.

59 Q. 3. Are you the identical person who applied to purchase this land on the 14th day of February, 1902, and made the sworn statement assigned by law before the Register (or Receiver) on that day?

A. I am.

Q. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

A. I am.

Q. 5. When and in what manner was such inspection made?

A. On the 13th day of February, 1902, by going over the land.

Q. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to you?

A. No.

Q. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

A. No.

Q. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

A. Mountainous, and the soil is rocky.

Q. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

A. No.

Q. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

60 A. Chiefly valuable for its timber.

Q. 11. From what facts do you conclude the land is chiefly valuable for timber or stone?

A. From the amount of timber that is on the land.

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?

A. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

A. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

A. No.

EDWARD JORDAN.

I hereby certify that the above-named Edward Jordan personally appeared before me; that I verily believe affiant to be the persons he represents himself to be; and that each question and answer in

the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon, this 7 day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the lands is forfeited and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person or persons except himself and I am satisfied from such examination that the entry is made in good faith for the entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm or corporation.

J. T. BRIDGES, *Register*.

62

No. 9239.

Receiver's Office at Roseburg, Oregon.

Act June 3, 1878.

May 7th, 1902.

Received from Edward Jordan, of Coburg, Lane County, Ore., the sum of Four Hundred dollars and — cents; being in full for the Lots 7, 8, 9, 10, quarter of Section 2, in Township No. 22 S. of Range No. 2 W. containing 160 acres and — hundredths, at \$2.50 per acre.
\$400.

— — —, *Receiver*.

51c. testimony fee received. Number written words, 225 rate per 100 words 22½ cents.
N-. 9239.

LAND OFFICE, May 7, 1902.

It is hereby certified that in pursuance of law, Edward Jordan residing at Coburg in Lane County, State of Oregon, on this day

purchased of the Register of this Office the Lots 7, 8, 9 and 10, of Section 2, in Township 22 S. of Range 2 West, of the Wil. (Principal) Meridian, Oregon, containing 160 acres at the rate of two dollars and 50 cents per acre, amounting to Four Hundred Dollars and — cents, for which the said Edward Jordan has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said Edward Jordan shall be entitled to receive a patent for the lot above described.

J. T. BRIDGES, *Register.*

63

No. 9239.

Cash Entry.

Land Office at Roseburg, Oregon.

Sec. 2, Town. 22 S. Range 2. W.

5-3-04. No Action Required by Div. Pt. Entry Intact Ref'd.

Co.

O. K.

G. & S.

Approved June 4, 1904.

By F. L. L. H., Clerk.

Division C.

Patented August 3, 1904.

Recorded Vol. 134. Page 196.

Counsel for the government also offers in evidence, a set of papers covering the entry of Ethel M. La Raut, for Lots 9, 10, 15 and 16, in Section 18, Township 21, S. of Range 2, West, W. M., being a timber and stone entry patented to ———, which is sought to be set aside by this suit, and there being no objections, the same is received, filed and marked Plaintiff's Exhibit "B," and is in words and figures as follows, to wit:

Department of the Interior,

General Land Office.

WASHINGTON, D. C., May, 6, 1910.

I hereby certify that the annexed copies, are true and literal exemplifications of the originals in the files of this office.

64 In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.]

JOHN O'CONNELL,

Acting Recorder of the General Land Office.

Timber and Stone Lands.

Sworn Statement.

(To be made in duplicate.)

Land Office at Roseburg, Oregon.

Dated February 17, 1902.

I, Ethel M. La Raut, (unmarried) of (town or City) Saginaw, County of Lane, State of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the State of California, Oregon, Nevada and in Washington Territory" as extended to all the public Lands States by act of August 4, 1892, for the purchase of the Lots Numbered 9, 10, 15, and 16 of Section 28, Township No. 21, S. of Range 2, West, in the district of lands subject to sale at Roseburg, Oregon do solemnly swear that I am a native born citizen of the United States of the age of 25 years, and by occupation Clerk, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts, that I do not apply to purchase

the land above described on speculation, but in good faith to
65 appropriate it to my own exclusive use and benefit, and that

I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Saginaw, Oregon.

ETHEL MAUDE LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by ———, and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 17th day of February, 1902.

————, Receiver.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by ———, and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 17th day of February, 1902.

NOTE.—Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such

66 offense. In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land or of any right, title, or claim thereto, are absolutely null and void as against the United States.

In case the party has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

ETHEL M. LA RAUT.

STATE OF OREGON,
County of Lane, ss:

I, C. J. Howard, being first duly sworn, say that I am the Foreman of Bohemia Nugget, that said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said County and State. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times; the first on the 28th day of February, 1902, and the last on the 2nd day of May 1902. That said notice was published in the regular and entire issue of every number of said paper during said period and time of publication and that the said notice was published in a newspaper proper and not in a supplement.

C. J. HOWARD,

Subscribed and sworn to before me this 2nd day of May, 1902.

M. G. GHY, N. P.

67

Notice for Publication.

United States Land Office.

ROSEBURG, OREGON, Feb. 17, 1902.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "Act for the sale of timber land in the States of California, Oregon, Nevada and Washington Territory," as extended to the Public Land States by Act of August 4, 1892, Ethel M. La Raut of Saginaw, County of Lane, State of Oregon, has this day filed in this office her sworn statement No. 2046 for the purchase of Lots numbered 9, 10, 15 and 16, of Section No. 28, Township 21 South of Range 2 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, for Thursday, the 8th day of May, 1902.

She names as witnesses:

Orin Robinson, D. N. Brumbaugh of Cottage Grove, Oregon, Harry Dunbar, of Eugene, Oregon; Lucy La Raut, of Wilbur, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 8th day of May, 1902.

J. T. BRIDGES.

Department of the Interior.

United States Land Office.

ROSEBURG, OREGON, May 8, 1902.

D. H. Brumbaugh being first duly sworn deposes and says that he is the identical person who acted as a witness in the timber cash entry of Ethel La Raut for Lots 9, 10, 15 and 16, Sec. 28, Tp. 21 S., R. 2, West, upon which final proof was submitted this 8th day of May, 1902; that his name in the published notice was printed D. N. Brumbaugh, which is incorrect as it should have been D. H. Brumbaugh, and it is for the reason of correcting the same that this affidavit is made.

D. H. BRUMBAUGH.

Subscribed and sworn to before me this 8th day of May, 1902.

J. T. BRIDGES, *Register*.

Non-mineral Affidavit.

Department of the Interior.

United States Land Office.

ROSEBURG, OREGON, May 8, 1902.

Miss Ethel E. La Raut, being duly sworn according to law, deposes and says that she is the identical person who is an applicant for Government title to the Lots No. 9, 10, 15, and 16, Sec. 28. Tp. 21, S. R. E. West, that she is well acquainted with the character of the said described land, and with each and every legal sub-division thereof, having frequently passed over the same; that *his* personal knowledge of said land is such as to enable *him* to testify understandingly with regard thereto; that there is not, to *his* knowledge within the limits thereof, any vein, or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land to *his* knowledge any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that *his* application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but

with the object of securing said land for timber purposes; and that his post-office address is, Saginaw, Oregon.

Miss ETHEL M. LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before *he* signed *his* name thereto; that said affiant is to me personally known (or has satisfactorily identified before me by ———, and that I verily believe *him* to be a credible person and the person *he* represents *himself* to be, and that this affidavit was subscribed and sworn to before me at my office at Roseburg, Oregon, within the Roseburg, Oregon land district on the 8th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely to prosecute him to the full extent of the law.

70 Revised Statutes of the United States, Title LXX, Crimes,
Chap. 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose or certify, truly or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states, or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Testimony of Witness Under Acts of June 3, 1878, and August 4, 1892.

D. H. BRUMBAUGH, being called as a witness in support of the application of Ethel M. La Raut, to purchase the Lots 9, 10, 15 and 16, of Section 28, Township 21 S., of Range 2 W., Testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 36 years, Cottage Grove, Oregon, and I reside there.

71 Q. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

A. I am.

Q. 3. When and in what manner was such inspection made?

A. I was over the land Feb. 16, 1902.

Q. 4. Is it occupied or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

A. No.

Q. 5. Is it fit for cultivation?

A. No.

Q. 6. What causes render it unfit for cultivation?

A. Rocky, steep and covered with timber.

Q. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

A. Nothing that I know of.

Q. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for timber.

Q. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. It is mostly all timber.

Q. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner with any person, whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

A. She has not to my knowledge.

Q. 11. Are you in any way interested in this application or in the lands above described or the timber or stone, saline mines, or improvements of any description whatever thereon?

A. No.

D. H. BRUMBAUGH.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed and — thereto, and that the same was subscribed and sworn before me this 8th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chapter 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is

73 true, wilfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. See Sec. 1750.

The testimony of claimant and witness must be taken at the same Time and before the Register and Receiver of the land district in which the land is situated.

Timber and Stone Lands.

Testimony of Claimant.

Miss ETHEL LA RAUT, being called as a witness in support of his application to purchase the Lots No. 9, 10, 15 and 16, of Sec. 28, Township 21, S., Range 2 west testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 25 years, I am unmarried, Saginaw, Oregon, and I reside there.

Q. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

A. I am; was born in Oregon.

Q. 3. Are you the identical person who applied to purchase this land on the 17th day of February, 1902, and made the sworn statement assigned by law before the Register (or Receiver) on that day?

A. I am.

Q. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

74 A. I am.

Q. 5. When and in what manner was such inspection made?

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

A. No.

Q. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

A. No.

Q. 8. What is the situations of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

A. It is mountainous and the soil is rock.

Q. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

A. No.

Q. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for its timber.

Q. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. The soil is rocky and it is covered with timber?

Q. 12. What is the estimated market value of the timber standing upon this land?

A. About \$800.00.

75 In case the party is of foreign birth, a certified transcript from the court records of his declaration of intention to become a citizen, or naturalization, or a copy thereof, certified by the officer taking this proof must be filed with the case.

Q. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way, or any manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?

A. I have not.

Q. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

A. I do.

Q. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making or in the land, or in the timber thereon?

A. No.

Miss ETHEL M. LA RAUT.

I hereby certify that the above-named Miss Ethel M. La Raut, personally appeared before me, that I verily believe affiant to be the person -he represents *himself* to be; and that each question and answer in the foregoing testimony was read to *him* in my presence before -he signed *his* name thereto, and that the same was
76 subscribed and sworn to before me at Roseburg, Oregon, this 8th day of May, 1902.

J. T. BRIDGES.

NOTE.—Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

I hereby certify, that I have tested the accuracy of affiant's information and the bona fides of this entry by a clear and sufficient oral cross-examination of the claimant and *his* witnesses, directed to as-

certain whether the entry is made in good faith for the appropriation of the land to the entryman's own use and not for sale or speculation, and whether -he has conveyed the land or *his* right thereto, or agreed to make any such conveyances, or whether -he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons except *himself*, and am satisfied from such examination that the entry is made in good faith for *entryman's* own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person, or persons, firm or corporation.

J. T. BRIDGES, *Register*.

77

Timber Land, Act June 3, 1878.

Notice for Publication.

United States Land Office.

ROSEBURG, OREGON, Feb. 17, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of Aug. 4, 1892, Ethel M. La Raut, of (town or city) Saginaw, County of Lane, State of Oregon, has this day filed in this office *his* sworn statement No. 2046 for the purchase of the Lots Numbered 9, 10, 15 and 16, of Section 28, Township 21, South of Range 2 West and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish *his* claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Thursday, the 8th day of May, 1902.

He names as witnesses:

Orin Robinson, Cottage Grove, Oregon.

D. H. Brumbaugh, Cottage Grove, Oregon.

Harry Dunbar, Eugene, Oregon.

Lucy La Raut, Wilbur, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 8th day of May, 1902.

J. T. BRIDGES, *Register*.

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This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

Certificate as to Posting of Notice.

United States Land Office.

ROSEBURG, OREGON, May 8, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the seventeenth day of February, 1902.

I further certify that there are no adverse claims to the land herein described, known to this office.

J. T. BRIDGES, *Register*.

12128-10.

No. 92444.

Receiver's Office at Roseburg, Ore.

Act June 3, 1878.

May 8, 1902.

Received from Ethel M. La Raut, of Saginaw, Lane County, Ore., the sum of Four Hundred and Seven Dollars and Five Cents, being in full for the Lots 9, 10, 15 and 16, Quarter of Section No. 28, in Township No. 21 South of Range No. 2 W., containing 162 acres and 82 hundredths.

\$2.50 per acre.

J. H. BOOTH, *Receiver*.

\$407.05.

Received R. and R. fees \$10.

\$49c. Testimony fee received. No. of written words 220,
79 rate per one hundred words 22½c.

1212-11.

No. 924-4.

Land Office at Roseburg, Oregon.

May 9, 1902.

It is hereby certified that in pursuance of law, Ethel M. La Raut, residing at Saginaw, in Lane County, State of Ore., on this day purchased of the Register of this office the Lots 9, 10, 15 and 16, of Section No. 28, in Township No. 21 S. of Range 2 W. of the Will. Principal Meridian, Ore., containing 162.82 acres, at the rate of Two Dollars and 50 Cents, for which the said Ethel M. La Raut has made payment in full as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Ethel

M. La Raut shall be entitled to receive Patent for the lot- above described.

J. T. BRIDGES, *Register*.

12128.

Patent to contain reservation according to provise to the Act of Aug. 30, 1890.

No. 9244.

Cash Entry.

Land Office at Roseburg, Oregon.

Sec. 2, Town. 21 S. Range 2 W. 5-31-04. No action required by Div. P. Entry, Intact Ref'd C.

G. A. P.

O. K.

(Div. C.)

(Lis. 23.)

80 Approved June 4, 1904,
 By F. L. L. H., Ex. Clerk.

Division C.

Patented August 3, 1904.

Recorded Vol. 134, Page 200.

Counsel for the Government, also offers in evidence a similar set of papers relating to the timber and stone entry of Lucy M. La Raut, covering Lots 1, 2, 7 and 8, Section 28, Township 21, South of Range 2 West, W. M., and there being no objections, the *said* is received and filed, marked Plaintiff's Exhibit, "C," which is in words and figures as follows, to-wit:

Department of the Interior,

General Land Office.

WASHINGTON, D. C., May 6, 1910.

I hereby certify that the annexed copies are true, and literal explanations of the originals in the files of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be Affixed, at the City of Washington, on the day and year above written.

[SEAL.]

JOHN O'CONNELL,
Acting Recorder of the General Land Office.
LUCY LA RAUT.

R. X. 202.

12130-1.

STATE OF OREGON,
County of Lane, ss:

I, C. J. Howard, being first duly sworn, say that I am the Fore-
man of the Bohemia Nuggett. That said publication is a
81 weekly newspaper, published and issued weekly and regu-
larly at Cottage Grove, in Lane County, State of Oregon,
and is of general circulation in said county and state. That the
notice of which the one hereto attached is a true and correct copy,
was published in said paper once a week for 9 weeks, being published
10 times; the first on the 28th day of February, 1902, and the last
on the 2nd day of May, 1902. That said notice was published in
the regular and entire issue of every number of said paper during
said period and time of publication, and that the said notice was
published in a newspaper proper, and not in a Supplement.

C. J. HOWARD.

Subscribed and sworn to before me this 2 day of May, 1902.

M. G. GHY, N. P.

Notice for Publication.

United States Land Office.

ROSEBURG, Feb. 17, 1902.

Notice is hereby given that in compliance with the provisions
of the Act of Congress of June 3, 1878, entitled "An Act for the
sale of timber land in the States of California, Oregon, Nevada and
Washington Territory," as extended to all the Pacific Land States
by Act of Aug. 4, 1892, Lucy La Raut, of Wilbur, County of
Douglas, State of Oregon, has this day filed in this office her sworn
statement, No. 2045, for the purchase of the lots numbered 1, 2, 7
and 8 of Section No. 28, Township 21 South of Range 2,
82 West and will offer proof to show that the land sought is
more valuable for the timber or stone than for agricultural
purposes, and to establish her claim to said land before the Register
and Receiver of this Office at Roseburg, Oregon, on Thursday, the
eighth day of May, 1902.

She names as witnesses:

Orin Robinson, D. N. Brumbaugh, of Cottage Grove, Oregon,
Harry Dunbar of Eugene, Oregon, Ethel La Raut of Saginaw,
Oregon.

And all persons claiming adversely the above described land are
requested to file their claims in this office on or before said eighth
day of May, 1902.

J. T. BRIDGES, *Register.*

12130-2.

Non-mineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and believe.

This non-mineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavit required of the entryman.

Department of the Interior,

United States Land Office.

ROSEBURG, OREGON, May 8, 1902.

Miss Lucy La Raut, being duly sworn according to law, deposes and says that *he* is the identical person who is an applicant for

53 Government title to the lots — *he* is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that *his* personal knowledge of said land is such as to — *him* to testify understandingly with regard thereto; that there is not, to *his* knowledge, within the limits thereof, any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to *his* knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposit of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person, or persons; that said land is essentially non-mineral land, and that *his* application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing the land for timber purposes; and that *his* post-office address is Wilbur, Oregon.

MISS LUCY LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before *he* signed *his* name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by — — —, and that I verily believe *him* to be a credible person and the person *he* represents himself to be, and that this affidavit was subscribed and sworn to before me at my office

84 in Roseburg, Oregon, with- the Roseburg Oregon land district on this 8th day of May, 1902.

J. T. BRIDGES, *Register.*

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the

Government, if it be ascertained that he testifies falsely to prosecute him to the full extent of the law.

Revised Statutes of the United States, Title LXX, Crimes,
Chapter 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath states or subscribed any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars and by imprisonment, at hard labor, not more than five years and shall moreover *that* after be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

12130-4.

85 (The testimony of two witnesses, in this form taken separately required in each case.)

Testimony of Witness under Acts of June 3, 1878, and August 4, 1892.

I, HARRY DUNBAR, being called as a witness in support of the application of Lucy La Raut, to purchase the Lots, 1, 2, 7 and 8, of Section 28, Township 21 S., of Range 2 West, testifies as follows:

Q. 1. What is your age, post-office address and where do you reside?

A. Twenty-five years, Eugene, Oregon, and I reside there.

Q. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

A. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was on the land Feb. 15, 1902.

Ques. 4. Is it occupied, or are there any improvements on it, not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Ans. No.

Q. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. On account of the hills and rocks.

Ques. 7. Are there any salines, or indications of deposits, gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are

86

valuable.

Ans. None to my knowledge.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon? Or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what fact do you conclude that the land is chiefly valuable for timber or stone?

Ans. From amount of timber on the land.

Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement, or contract, in any way or manner, with any person whomsoever, by which the title which -he may acquire from the Government of the United States may inure in whole or part to the benefit of any person except *himself*?

Ans. She has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or in the land above described, or the timber or stone, salines mines, or improvements, of any description whatever thereon?

Ans. No.

HARRY DUNBAR.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 8th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the testimony is taken, 87 should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained, that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chap. 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

12130-5.

(The testimony of claimant and witness must be taken at same time, and before the register and receiver of the land district in which the land is situated.)

Timber and Stone Lands.

Testimony of Claimant.

I, Miss LUCY LA RAUT, being called as a witness in support of his application to purchase the lots No. 1, 2, 7, 8 of Section 28, Township 21 S., Range Two West, testifies as follows:

88 Ques. 1. What is your age, post-office address, and where do you reside?

Ans. 23 years, Wilbur, Oregon, and I reside there. (I am unmarried.)

Ques. 2. Are you a native born citizen of the United States; and if so, in what state or territory were you born?*

*In case the party is of foreign birth, a certified transcript from the court records of declaration of intention to become a citizen, or naturalization, or a copy thereof, certified by the officer, taking this proof, must be filed with the case.

121,230.

Ans. I am, was born in Oregon.

Ques. 3. Are you the identical person who applied to purchase this land on the 17 day of February, 1902, and made the sworn statements assigned by law before the Register (or Receiver) on that day?

Ans. I am.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 5. When and in what manner were such inspections made?

Ans. On the 15th day of February, 1902, by going over the land.

Ques. 6. Is the land occupied? Or are there any improvements on it not made for ditch, or canal purposes, or which were not made by or do not belong to you?

89 Ans. No.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. I think not.

Ques. 8. What is the situation of this land and what is the nature of the soil and what causes render the land unfit for cultivation?

Ans. It is very mountainous, and the soil is rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land, if so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber and stone?

Ans. Chiefly valuable for its timber.

Ques. 11. From what fact do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the amount of timber that is on the land.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. About \$800.

Ques. 13. Have you sold or transferred your claim to this land making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole
90 or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

Ans. No.

Miss LUCY LA RAUT.

I hereby certify that the above named Miss Lucy La Raut personally appeared before me; that I verily believe affiant to be the person -he represents *himself* to be, and that each question and answer in the foregoing testimony was read to *him* in my presnce before -he signed *his* name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon, this 8 day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—Every person swearing falsely to the above deposition is guilty of a perjury and will be punished as provided by law for such offense. In addition thereto the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title, or claim thereto are absolutely null and void as against the United States.

91 I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and *his* witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entry-man's own use and not for sale or speculation, and whether -he has conveyed the land, or *his* right thereto, or agreed to make any such conveyance, or whether -he has directly or indirectly entered into any contract or agreement in any manner with any person or persons, whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons except *himself*, and am satisfied from such examination that the entry is made

in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm, or corporation.

J. T. BRIDGES, *Register*.

12130-7.

Department of the Interior,

United States Land Office.

ROSEBURG, OREGON, May 8, 1902.

D. H. Brumbaugh, being first duly sworn, deposes and says that he is the identical person who acted as a witness in the timber cash entry of Lucy La Raut for the Lots 1, 2, 7 and 8, in Sec. 28, Tp. 21, S., R. 2 West, upon which final proof was submitted this 8th day of May 1902, and that his name in the printed notice was printed
92 D. N. Brumbaugh, which is incorrect as it should have been D. H. and it is for the reason of correcting the same that this affidavit is made.

D. H. BRUMBAUGH.

Subscribed and sworn to before me this 8th day of May, 1902.

J. T. BRIDGES, *Register*.

12130-8.

Timber Land, Act June 3, 1878.

Notice of Publication.

United States Land Office.

ROSEBURG, OREGON, February 17, 1902.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory" as extended to all the Public Land States by act of August 4, 1892, Lucy La Raut, of (town or city) Wilbur, county of Douglas, (State or Territory) of Oregon, has this day filed in his office his sworn statement No. 2045, for the purchase of the Lots Numbered 1, 2, 7 and 8, of Section No. 28, Township 21, South of Range 2 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to sand land, before the Register and Receiver of this office at Roseburg, Oregon, on Thursday, the 8 day of May, 1902.

He names as witnesses:

93 Orin Robinson, of Cottage Grove, Oregon.

D. N. Brumbaugh, of Cottage Grove, Oregon.

Harry Dunbar, Eugene, Oregon.

Ethel La Raut, of Saginaw, Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before the 8th day of May, 1902.

J. T. BRIDGES, *Register*.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

Certificate as to Posting of Notice.

United States Land Office.

ROSEBURG, OREGON, May 8, 1902.

I, J. T. Bridges, Register of the land office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the 17th day of February, 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES, *Receiver*.

12130-9.

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

94

Timber and Stone Lands.

Sworn Statement.

To be made in Duplicate.

Land Office at Roseburg, Oregon.

Date, February 17, 1902.

I, Lucy La Raut (unmarried) of Wilbur, County of Douglas, State of Oregon, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, for the purchase of the Lots Numbered 1, 2, 7 and 8, of Section 28, Township 21 South of Range 2 West in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born citizen of the United States of the age of 23 years, by occupation Housekeeper, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is

uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts, that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement or contract, or in any way or manner, with any person, or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Wilbur, Ore.

LUCY LA RAUT,
Wilbur, Oregon, Douglas Co.

I hereby certify that the foregoing affidavit was read to affiant in my presence before -he signed *his* name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by ———) and that I verily believe *him* to be the person -he represents *himself* to be, and that this affidavit was subscribed and sworn before me this 17th day of February, 1902.

J. H. BOOTH, *Receiver*.

NOTE—Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense, in addition thereto, the money that may be paid for the land is forfeited and all conveyances of the land or of any right title or claim thereto are absolutely null and void as against the United States.

In case the party has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

96

12130-10.

No. 92216.

Receiver's Office at Roseburg, Oregon.

May 8, 1902.

Act June 3, 1878.

Received from Lucy La Raut, of Wilbur, Douglas County, Oregon, the sum of Four Hundred and 7 dollars and five cents; being in full for the Lots 1, 2, 7 and 8, quarter of Section 28, in Township No. 21 South, of Range No. 2 West, containing 162 acres and 92 hundredths, at \$2.50 per acre.

J. H. BOOTH, *Receiver*.

\$407.05.

Received R. & R. fee \$10.00.

\$.49c. testimony fee received. Number of written words 220,
rate per 100 words 22½ cents.

12130-11.

No. 9246.

Land Office at Roseburg, Oregon.

May 8, 1902.

I hereby certify that in pursuance of law, Lucy La Raut, residing at Wilbur, in Douglas County, State of Oregon, on this day purchased of the Register of this Office the Lots 1, 2, 7 and 8, of Section 28, in Township No. 21 S. of Range No. 2 W., of the Willamette Principal Meridian, Ore., containing 162.82 acres at the rate of Two Dollars and 50 cents per acre, amounting to Four Hundred and 7 dollars, and five cents, for which the said Lucy La Raut, has made payment in full as required by law.

97 Now, therefore, be it known that on presentation of this certificate to the commissioner of the general land office, the said Lucy La Raut, shall be entitled to receive a Patent for the lot above described.

J. T. BRIDGES, *Register*.

12130-12.

No. 9246.

Cash Entry.

Land Office at Roseburg, Oregon.

Sec. 28. Town, 21 S. Range 2 W.

5-31—No Action Required by Div. P. Entry. Intact Ref'd C.
G. & P.

O. K.

Approved June 4, 1904,

By F. L. L. H., Ex. Clerk.

Division C.

Patented August 3, 1904.

Recorded Vol. 134, Page 202.

Counsel for the government offers in evidence a similar set of papers for the same purpose, covering the timber and stone entry of Stephen A. La Raut, and embracing the Northeast quarter of Section 26, Township 21 South of Range three West, of Willamette Meridian, and there being no objection, the same is received and filed, marked plaintiff's "Exhibit D," and is in words and figures as follows, to-wit:

Department of the Interior,

General Land Office.

WASHINGTON, D. C., May 6, 1910.

I hereby certify that the annexed copies are true, and literal exemplifications of the originals in the files of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.]

JOHN O'CONNELL,
Acting Recorder of the General Land Office.

12126-1.

Timber Land, Act June 3, 1878.

Notice for Publication.

United States Land Office.

ROSEBURG, OREGON, February 7, 1902.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Stephen A. La Raut, of Saginaw, County of Lane, State of Oregon, has this day filed in this office his sworn statement No. 2026, for the purchase of the N. E. $\frac{1}{4}$ Section No. 26, Township 21 S. South of Range 3 W., and will offer proof to show that the land sought is more valuable for its timber or stone than

for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Mrs. Alice La Raut, of Saginaw, Oregon.

George Riggs, of Mabel, Oregon.

James Lee, of Cottage Grove, Oregon.

Daniel H. Brumbaugh, of Cottage Grove Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES, *Register.*

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must be also posted in a conspicuous place in the land office for the same period.

Certificate as to Posting of Notice.

United States Land Office.

ROSEBURG, OREGON, May 7, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the 7th day of Feb. 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES, *Register.*

STEPHEN A. LA RAUT.

12126-2.

100 STATE OF OREGON,
County of Lane, ss:

I. C. J. Howard, being first duly sworn, say that I am the Foreman of Bohemia Nugget. That said publication is a weekly newspaper published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and State. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times the first on the 28th day of February, 1902, and the last on the 2nd day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper, during said period and time of publication, and that the said notice was published in a newspaper proper and not in a Supplement.

C. J. HOWARD.

Subscribed and sworn to before me this 2 day of May, 1902.

M. G. GHY, *N. P.**..otice of Publication.*

United States Land Office.

ROSEBURG, OREGON, Feb. 7, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Stephen A. La Raut, of Saginaw, County 101 of Lane, State of Oregon, has this day filed in this office his sworn statement No. 2026 for the purchase of the N. E. $\frac{1}{4}$ of Section No. 26, Township 21 South of Range 3 West, and will offer proof to show that the land sought is more valuable for its

timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Mrs. Alice La Raut, of Saginaw, Oregon.

George Riggs, of Mabel, Oregon.

James Lee, Daniel H. Brumbaugh, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before the said 7th day of May, 1902.

J. T. BRIDGES, *Register*.

(Testimony of two witnesses, in this form taken separately required in each case.)

Testimony of Witness Under Acts of June 3, 1878, and August 4, 1892.

Mrs. ALICE LA RAUT, being called as a witness in support of the application of Stephen A. La Raut, to purchase the N. E. $\frac{1}{4}$ of Section 26, Township 21, South of Range, 3 West, testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Answer. 40 years, Saginaw, Oregon, and I reside there.

102 Ques. 2. Are you acquainted with land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was over the land Feb. 4, 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is steep, rocky, has deep canyons, and covered with timber.

Ques. 7. Are there any salines, or indications of deposit of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. None that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. It is steep and rocky and nothing else of value on it.

103 Ques. 10. Do you know whether the applicant has directly, or indirectly made any agreement or contract, in any way or manner with any person whomsoever, by which the title which he may acquire from the government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. He has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. No.

MRS. ALICE LA RAUT.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before she signed her name thereto, and that the same was subscribed and sworn to before me this 7th May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX; Crimes, Chapter 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that
104 he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Testimony of claimant and witnesses must be taken at the Same Time, and before the Register and Receiver, of the land district which the land is situated.

Timber and Stone Lands.

STEPHEN A. LA RAUT, being called as a witness in support of his application to purchase the N. E. $\frac{1}{4}$ of Section 26, Township 21, S. Range 3 West, testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Ans. 40 years, Saginaw, Oregon, and I reside there.

Ques. 2. Are you a native born citizen of the United States; and if so, in what state or territory were you born?

Ans. I am, was born in Oregon.

Ques. 3. Are you the identical person who applied to purchase this land on the 7th day of February, 1902? and made the
105 sworn statement by law before the Register?

Ans. I am.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

Ans. I am.

Ques. 5. When and in what manner was such inspection made?

Ans. On the 4th day of Feb. 1902 by going over the land.

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

Ans. No.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No.

Ques. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

Ans. It is mountainous and the soil is rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for its timber.

106 Ques. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the amount of timber that is on the land.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. I do not know at this time.

In case the party is of foreign birth, a certified transcript from the court records of his declaration of intention to become a citizen, or naturalization, or a copy of *certified* by the officer taking his proof, must be filed with the case.

Ques. 13. Have you sold, or transferred your claim to this land since making your sworn statement, or have you directly, or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

Ans. No.

STEPHEN A. LA RAUT.

107 I hereby certify that the above-named Stephen A. La Raut, personally appeared before me; that I verily believe affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon, this 7 day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title or interest thereto are absolutely null and void as against the United States.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the lands to the entry man's own use and not for sale or speculation, and whether he has the land or his right thereto, or agreed to make any such conveyance of whether he has directly, or indirectly entered into any contract or agreement in any manner with any person, or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons except himself, and

108 am satisfied from such examination that the entry is made in good faith, for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm or corporation.

J. T. BRIDGES, *Register*.

Non-mineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The non-mineral affidavit accompany- an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior,

United States Land Office.

ROSEBURG, OREGON, May 7, 1902.

Stephen A. La Raut, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for government-title to the N. E. $\frac{1}{4}$ of Sec. 26, Tp. 21, S. R. 3 West, that he is well acquainted with the character of the described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge, within the limits thereof, any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any
 109 placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form, sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs, or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year, by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently claiming title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Saginaw, Oregon.

STEPHEN A. LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ——— and that I verily believe him to be a credible person, and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Roseburg, Oregon, within the Roseburg, Oregon land district, on the 7 day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government of the United States, if it be ascertained that he
 110 testifies falsely, to prosecute him to the full extent of the law.

Revised Statutes of the United States, Title LXX, Crimes, Chap. 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will

testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

12126-7.

(The testimony of two witnesses, in this form, taken separately required in each case.)

Testimony of Witness Under Acts of June 3, 1878, and August 4, 1892.

DANIEL H. BRUMBAUGH, being called as a witness in support of the application of Stephen A. La Raut, to purchase the N. E. $\frac{1}{4}$ of section 26, township 21, S. of Range 3 West, testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Answer. 36 years, Cottage Grove, Oregon, and I reside
111 there.

Ques. 2. Are you acquainted with the land above described, by personal inspection of each of its smallest legal sub-division?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was over the land about Feb. 4, 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is steep, rocky and covered with timber.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs, or mineral deposits are valuable.

Ans. Nothing that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. It is mostly all timber.

112 Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner, with any person, whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. He has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or in the lands above described, or the timber, or stone, salines, mines, or improvements of any description whatever thereon?

Ans. No.

DANIEL H. BRUMBAUGH.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chapter 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered that he
113 will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully, and contrary to such oath states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States, until such time as the judgment against him is reversed. (See Sec. 1750.)

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

Timber and Stone Lands.

Sworn Statement.

(To Be Made in Duplicate.)

Land Office at Roseburg, Oregon.

Date, February 7, 1902.

I, Stephen A. La Raut, of Saginaw, county of Lane, State of Oregon, desiring to avail myself of the provisions of the Act

of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the public Land States by act of August 4, 1892, for the purchase of the N. E. $\frac{1}{4}$ of Section 26 Township No. 21, S. South of Range 3 W., in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born or have declared my intention to become a citizen, of the

114 United States, of the age 40 years and by occupation Lumberman, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement, or contract, or in any way or manner, with any person, or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person, except myself, and that my post-office address is Saginaw, Oregon.

STEPHEN A. LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be the person he represents himself to be; that this affidavit was subscribed and sworn to before me this 7th day of February, 1902.

J. H. BOOTH, *Receiver*.

12126-9.

No. 9241.

Receiver's Office at Roseburg, Oregon.

May 7, 1902.

115 Received from Stephen A. La Raut, of Saginaw, Lane County, Oregon, the sum of Four Hundred Dollars and — cents being in full for the NE $\frac{1}{4}$ quarter of Section No. 26, in Township No. 21, S. of Range No. 3 West, containing 160 acres and — hundredths at \$2.50 per acre.
\$400.00.

J. H. BOOTH, *Receiver*.

Received R. & R. fees \$10.00; \$.48c. testimony fee received. Number of written words 215, rate per 100 words, 22 $\frac{1}{2}$ cents.

No. 9241.

Land Office at Roseburg, Ore.

May 7, 1902.

It is hereby certified that in pursuance of law Stephen A. La Raut, residing at Saginaw, in Lane County, State of Oregon, on this day purchased of the Register of this office the NE $\frac{1}{4}$ quarter of Section No. 26, Township No. 21, S. of Range No. 3 West, of the Willamette Principal Meridian, Oregon, containing 160 acres at the rate of two dollars and 50 cents per acre, amounting to Four Hundred Dollars and — cents, for which the said Stephen A. La Raut has made payment in full as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said

Stephen A. La Raut, shall be entitled to receive a Patent
116 for the lot above described.

J. T. BRIDGES, *Register.*

No. 9241.

Cash Entry.

Land Office at Roseburg, Oregon.

Sec. 26, Town 21, S. Range 3 West.
5-31-04. No action Required by Div. P.
Entry Intact Ref'd C.

G. & P.

O. K.

Approved June 4, 1904. By F. L. L. H. Ex-Clerk.
Recorded Vol. 134, Page 198.
6-9.

Counsel for the Government offers in evidence a similar set of papers, or rather certified copies thereof, covering the entry of Alice La Raut, for the SE $\frac{1}{4}$ of Section 26, Township 21, South of Range 3 West, Willamette Meridian, and there being no objection, the same is received and filed, and marked Plaintiff "Exhibit 'E,'" which is in words and figures as follows to-wit:

"Department of the Interior,

General Land Office.

WASHINGTON, D. C., May 6, 1910.

I hereby certify that the annexed copies are true, and literal exemplifications of the originals in the files of this office.

117 In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.]

JOHN O'CONNELL,
Acting Recorder of the General Land Office.

(The testimony of two witnesses, in this form, taken separately required in each case.)

Testimony of Witness under Acts of June 3, 1878, and August 4, 1892.

DANIEL H. BRUMBAUGH, being called as a witness in support of the application of Mrs. Alice La Raut, to purchase the SE $\frac{1}{4}$ of Section 26, Township 21, S. of Range 3 W., testifies as follows:

Question 1. What is your age, post-office address and where do you reside?

Answer. 36 years, Cottage Grove, Oregon, and I reside there.

Ques. 2 Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was on the land either the 4th or 5th of Feb. 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Ans. No.

118 Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is mountain land and mostly covered with timber.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. Not that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. It is mostly all timber.

Ques. 10. Do you know whether the applicant has directly, or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which *he* may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except *himself*?

Ans. She has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or

in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. No.

DANIEL H. BRUMBAUGH.

119 I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that — is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chapter 4.

SEC. 5392. Every person who having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly or that any written testimony declaration, deposition, or certificate by him subscribed is true, wilfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

120

Timber and Stone Lands.

Sworn Statement.

(To be made in duplicate.)

Land Office at Roseburg, Oregon.

Date, February 7, 1902.

I, Alice La Raut, of Saginaw, County of Lane, State of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, for the purchase of the SE¼ of Section 26, Township No. 21, S. of Range 3 West, in the district of lands subject to sale at Roseburg,

Oregon, do solemnly swear that I am a native born, or naturalized citizen of the United States, of the age of 39 years and by occupation House-wife. That I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement from the Government of the United States which may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Saginaw, Oregon.

MRS. ALICE LA RAUT.

121 I hereby certify that the foregoing affidavit was read to affiant in my presence before *he* signed *his* name thereto: that said affiant is to me personally known, (or has been satisfactorily identified before me by ——— and that I verily believe *him* to be the person *he* represents *himself* to be; and that this affidavit was subscribed and sworn to before me this 7th day of February, 1902.

J. H. BOOTH, *Receiver*.

ALICE LA' RAUT.

STATE OF OREGON,
County of Lane, ss:

I, C. J. Howard being first duly sworn, say that I am the foreman of Bohemia Nugget. That said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and state. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks being published 10 times, the first on the 28th day of February, 1902, and the last on the 2d day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper during said period, and time of publication, and that the said notice was published in a newspaper proper and not in a Supplement.

C. J. HOWARD.

Subscribed and sworn to before me this 2 day of May, 1902.

M. G. GHY, N. P.

122

Notice for Publication.

United States Land Office.

ROSEBURG, OREGON, Feb. 7, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Mrs. Alice La Raut, of Saginaw, County of Lane, State of Oregon, has this day filed in this office her sworn statement No. 2027, for the purchase of the SE $\frac{1}{4}$ of Section No. 26, Township 21, South of Range 3 W., and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish her claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

She names as witnesses:

Stephen A. La Raut, of Saginaw, Oregon.

George Riggs, of Mabel, Oregon.

James Lee, Daniel H. Brumbaugh, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES, *Register.*

Non-mineral Affidavit.

(This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The Non-Mineral Affidavit accompany- an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.)

Department of the Interior,

United States Land Office.

ROSEBURG, OREGON, May 7, 1902.

Mrs. Alice La Raut, being duly sworn, according to law, deposes and says: that *he* is the identical person, who is an applicant for Government title to the S. E. $\frac{1}{4}$ Sec. 26, Tp. 21, S. R. 3 West; that *he* is well acquainted with the character of said described land, and with each and every legal sub-division thereof, having frequently passed over the same; that *his* personal knowledge of said land is such as to enable *him* to testify understandingly with regard thereto; that there is not to *his* knowledge, within the limits thereof, any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is

not, to his knowledge, within the limits thereof, any vein or lode, of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposit of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed

124 for mining purposes under the local customs, or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year, by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Saginaw, Oregon.

MRS. ALICE LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by — —) and that I verily believe him to be a credible person, and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Roseburg, Oregon, within the Roseburg, Oregon land district, on this 7 day of May, 1902.

J. T. BRIDGES, *Register*.

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Revised Statutes of the United States, Title LXX, Crimes, Chap. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a
125 law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand Dollars, and by imprisonment at hard labor, not more than five years; and shall moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

ROSEBURG, OREGON, May 7, 1902.

Mrs. Alice La Raut, being first duly sworn deposes and says that she is the identical person who made application to purchase the

S. E. $\frac{1}{4}$ of Sec. 26, Tp. 21, S. R. 3 West; that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband, or any other person; and that she has never made an entry under said act, or derived any interest whatever directly, or indirectly, in or from a former entry made by any person, or association of persons.

Mrs. ALICE LA RAUT.

126 subscribed and sworn to before me the 7th day of May,
1902.

J. T. BRIDGES, *Register*.

12127-7.

No. 9242.

Receiver's Office at Roseburg, Ore.

May, 7, 1902.

Act June 3, 1878.

Received from Mrs. Alice La Raut, of Saginaw, Lane County, Oregon, the sum of Four Hundred Dollars and — cents; being in full for the S. E. $\frac{1}{4}$ quarter of Section No. 26, in Township No. 21, S. of Range No. 3 W., containing 160 acres and — hundredths, at \$2.50 per acre.

J. H. BOOTH, *Receiver*.

\$400.

Received R. & R. Fee \$10.00.

\$.51c testimony fee received. Number of written words 225,
Rate per 100 words, 22 $\frac{1}{2}$ cents.

Timber Land, Act June 3, 1878.

Notice for Publication.

United States Land Office.

ROSEBURG, OREGON, February 7, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the public land states by Act of August 4, 1892, Mrs. Alice La Raut, of Saginaw,
127 county of Lane, State of Oregon, has this day filed in this
office *his* sworn statement No. 2027 for the purchase of the
S. E. $\frac{1}{4}$ of Section No. 26, Township 21, S. South of Range 3 West,

and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish *his* claim to said land before the Register and Receiver of this office, at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

She names as witnesses:

Stephen A. La Raut, of Saginaw, Oregon.

George Briggs, of Mabel, Oregon.

James Lee, of Cottage Grove, Oregon.

Daniel H. Brumbaugh, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES, *Register*.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

Certificate as to Posting of Notice.

United States Land Office.

ROSEBURG, OREGON, May 7, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the 7 day of February, 1902.

128 I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES, *Register*.

Timber and Stone Lands.

(Testimony of Claimant.)

Mrs. ALICE LA RAUT, being called as a witness in support of *his* application to purchase the S. E. $\frac{1}{4}$ of Section 26, Township 21, S. Range 3 West, testifies as follows:

Question 1. What is your age, post-office address and where do you reside?

Answer. 40 years, Saginaw, Oregon, and I reside there.

Ques. 2. Are you a native born citizen of the United States; and if so, in what State or Territory were you born?

Ans. I was born in Oregon.

Ques. 3. Are you the identical person who applied to purchase this land on the 7th day of February, 1902, and made the sworn statement assigned by law before the Register (or Receiver) on that day?

Ans. I am.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

Ans. I am.

Ques. 5. When and in what manner was such inspection made?

Ans. On the 4th day of February, 1902, by going over the land.

Ques. 6. Is the land occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to you?

Ans. No.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No.

Ques. 8. What is the situation of this land, and what is the nature of the soil, and what causes renders the land unfit for cultivation?

Ans. It is mountainous and the soil is rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. The land is covered with good timber and unfit for any other purpose.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. About \$800.00.

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly, or indirectly made any agreement, or contract in any way or manner with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

Ans. No.

MRS. ALICE LA RAUT.

I hereby certify that the above named Mrs. Alice La Raut, personally appeared before me; that I verily believe the affiant to be the person -he represents himself to be; and that each question and answer in the foregoing testimony was read to *him* in my presence before -he signed *his* name thereto, and that the same was sub-

scribed and sworn to before me at Roseburg, Oregon, this 7th day of May, 1902.

J. T. BRIDGES, *Register.*

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination, of the claimant and *his* witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use, and not for sale or speculation, and whether -he has conveyed the land or *his* right thereto, or agreed to make any such conveyance or whether
131 -he has directly, or indirectly entered into any contract, or agreement in any manner with any person, or persons whomsoever, by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons, except *himself*, and I am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person, or persons, firm or corporation.

J. T. BRIDGES, *Register.*

Land Office at Roseburg, Oregon.

No. 9242.

May 7, 1902.

It is hereby certified, that in pursuance of law, Mrs. Alice M. La Raut, residing at Saginaw, in Lane County, State of Oregon, on this day purchased of the Register of this office the S. E. $\frac{1}{4}$ of Section No. 26, in Township No. 21 S. of Range 3 W. of the Will. (Principal Meridian) Ore., containing 160 acres, at the rate of Two dollars and 50 cents per acre, amounting to Four Hundred dollars and — cents for which the said Mrs. Alice M. La Raut has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Mrs. Alice La Raut, shall be entitled to receive a Patent for the lot above described.

J. T. BRIDGES, *Register.*

132

No. 9242.

Cash Entry.

Land Office, at Roseburg, Oregon.

Sec. 26, Town. 21, S. Range 3 W.

5-31-04, No. Action Required by Div. P. Entry Intact Ref'd C.

O. K.

G. & P.

Approved June 4, 1904.

By F. L. L. H., Ex. Clerk.

Division C.

Patented August 3, 190—.

Recorded in Vol. 134, Page 199.

C. J. HOWARD, is called as witness for the government, first duly sworn, testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCURT:)

Q. What business are you engaged in, or were you engaged in in February, 1902?

A. The newspaper business.

Q. Where?

A. Cottage Grove.

Q. What paper were you conducting there at that time?

A. The Bohemian Nuggett.

Q. I hand you a book designated as "Ledger No. 2" and ask you whether or not that was a book kept by you in connection with your newspaper business at that time?

A. Yes, sir.

133 Q. Do you recall publishing in your newspaper a notice of final proof of the entries in controversy in this case?

A. I do.

Q. Can you refer to your book, or do you recollect what was paid you for each of those notices?

A. Only by the book.

Q. Do you recall who paid you?

A. I do not.

Q. Does the book show?

A. It does not.

Q. Does it show when you were paid?

A. Yes, I think it does.

Q. Will you refer to the book and show what was charged for publishing the final proof notice of each of those entries, and when the same were paid to you?

A. The date of payment according to this account was Feb. 26, 1902.

Q. And what date did you make the charge for service?

A. That was on the 25th of February, 1902. I am not quite sure as to what that would mean. Whether or not that was when I checked this up and entered them in this book. Of course, it may have been when I received them. That would depend upon the first publication.

Q. According to that you probably received the money with the notice?

A. Yes, I am not sure I presume likely I did.

Q. What was the amount charged at each entry?

A. \$10.00 in each instance.

134 Q. And was that amount paid in each instance?

A. I assume that it was.

Q. What does the book show?

A. That is what they show.

Q. And they show all payments made on the same day?

A. Yes sir.

Q. Is there anything in the book there to indicate, or which indicates to you whether or not the same person paid them all?

A. I cannot say as to that.

Q. What does that check mark naturally indicate there?

A. I do not know. It would indicate one of several things. At times there was more or less errors in the original notices from the land office and it might be possible in checking up I used that mark and again it might be possible that I used it in checking up the amount due at that time, or the amount that was paid me at that time.

Q. You do not find that same check in relation to any of the others?

A. No, I have no knowledge of the check. I do not know why it should be put there.

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. Those notices which were published in your paper were the ordinary usual forms for entrymen in making final proof at the Roseburg Land Office?

A. Yes.

135 GEORGE W. RIGGS, is called as a witness for the government and being first duly sworn, testified as follows:

Direct examination.

(Questions by Mr. JOHN McCURT:)

Q. What is your business, Mr. Riggs?

A. Well, I have been doing so many kinds of work it is hard to say.

Q. I will ask you whether you ever engaged in the timber crusing business?

A. Yes sir.

Q. Were you ever employed by the Booth-Kelly Lumber Co.?

A. Yes sir.

Q. When was that?

A. Well, I worked for them seven or eight years until the last year.

Q. Within the last year?

A. Yes, until that time I was working for them the greater part of the time.

Q. You were working for them in 1901 and 1902?

A. Yes sir.

Q. Did you ever cruise any timber in townships twenty-one south of ranges two and three west of the Willamette Meridian?

A. Yes.

Q. Did Mr. Brumbaugh assist you in your work?

A. Yes sir.

Q. What function was he performing at that time?

A. He was Post Master for us.

136 Q. Who were you in the employ of at the time you cruised this land?

A. The Booth-Kelly Company.

Q. You do not know anything about the later location of that land by the entrymen?

A. No, sir.

Q. Do you know when they were entered with reference to the time they were cruised?

A. No.

(No cross-examination, witness excused.)

It is stipulated and agreed by and between the parties hereto, that the money for the payment of the purchase price to the government for the land involved in the entries in controversy, including land office fees of Stephen La Raut, Mistress Alice La Raut, Ethel La Raut, Lucy La Raut and Edward Jordan, together with the publication fees and the expenses of the entrymen in taking up the land and going to and from the land office were furnished and paid by the Booth-Kelly Lumber Company.

It is understood however, that the defendants may show the circumstances and agreement under which said sums of money were paid, and the plaintiff may show by evidence further than the stipulation itself, the manner or agreement under which the same was paid or furnished.

Counsel for the government in connection with said stipulation offers in evidence the letter of J. H. Booth, President of the Douglas National Bank, of Roseburg, Oregon, bearing date December 15th, 1910, and the same is received and filed, marked
137 "Plaintiff's Exhibit 'F,' " as follows, to-wit:

"Douglas National Bank.

ROSEBURG, OREGON, December 16, 1910.

Hon. A. C. Woodcock, Eugene, Oregon.

DEAR SIR: At request we send following records from our Draft Remittance Register to our San Francisco correspondent:

May 7, 1902.

Received draft of W. W. Brown, Asst. Cashier, Eugene Loan and Savings Bank, No. 38070, favor Ed Jordan, amount \$400.00.

Received.

J. H. BOOTH, *Receiver*.

No. 33071, same bank, favor S. A. La Raut, amount..... \$400.00

No. 33072, same bank, favor Mrs. F. A. La Raut..... 400.00

Both of these received by us from Mr. La Raut on May 10, 1902.

No. 33087, same bank, favor, Miss Lucy La Raut, amount 400.00

No. 33088, same bank, favor, Miss Ethel La Raut, amount 400.00

Both received from J. H. Booth, Receiver Land Office.

In other words, the draft to Mr. La Raut, and wife were cashed by him at the bank; the other three were received by us
 138 from J. H. Booth, Receiver, for credit to his account as Receiver.

Very truly.

J. H. BOOTH, *President.*"

It is further stipulated and agreed that the purchase price paid for said land together with land office fees and commissions were as follows:—Ed. Jordan, purchase money, \$400.00, fees and commission, \$10.51.

Stephen A. La Raut, purchase money, \$400.00, fees and commissions, \$10.51.

Alice La Raut, purchase money, \$400.00, fees and commissions, \$10.51.

Ethel M. La Raut, purchase money, \$407.05, fees and commissions, \$10.49.

Lucy La Raut, purchase money, \$407.05, fees and commissions, \$10.49.

D. H. BRUMBAUGH is called as a witness for the government and being first duly sworn testifies as follows:

Direct examination.

Questions by JOHN McCURT:

Q. Where do you live Brumbaugh?

A. About six miles southeast of Cottage Grove.

Q. What is your business?

A. Rancher now.

Q. Did you ever work for the Booth-Kelly Lumber Co.?

A. Yes, sir.

Q. When?

A. A number of different times since about 1900, I started
 139 ten or eleven years ago.

Q. Were you working for them in 1902?

A. At times, yes.

Q. What sort of work were you doing for them?

A. Running a compass for a cruiser.

Q. Cruising?

A. Running a compass for a cruiser.

Q. Did you ever cruise any in township twenty-one, south of range- two and three west?

A. Yes, sir.

Q. When did you do that cruising?

A. Well, I cannot give you the dates.

Q. Do you recall the circumstances of showing claims in that township and those two ranges to Stephen La Raut, and wife, and other members of his family?

A. Yes, sir, I showed them the claims.

Q. How long prior to that was it that you cruised the land?

A. I cannot tell you exactly—I think it was probably two or three months, it might have been longer than that.

Q. How did you happen to cruise that particular land?

A. Well, I was running the compass for the cruiser and we cruised the land right straight through.

Q. In whose employ was you at that time?

A. Well, Mr. Kelly and Mr. Booth,—Mr. Kelly is the one that paid me the money.

Q. How did you happen to show these people the land, and who did you show the land to?

140 A. Well, there was three of the La Rauts,—ladies and one gentleman, and they brought the numbers of certain lands to me from Mr. Kelly,—he requested me to show them certain lands which I done.

Q. How did Mr. Kelly ask or direct you to do that?

A. He simply wrote the numbers, and sent them to me, and requested me to show them that land.

Q. Who else was there besides the three La Raut ladies?

A. Well, there was Dunbar.

Q. What Dunbar?

A. Harry I think, and Mr. Tom Roach,—I think his name is Tom, and there was Ed. Jordan,—I ain't sure.

Q. Did you show the land all at the same time?

A. No, sir.

Q. How were they related to each other, as to time?

A. Well, they came to my place and I went right along with them. They went horseback generally and I went afoot. I never was out but one day at a time, but I think I was about three or four weeks showing all these people that land at different times.

Q. What members of the party went first?

A. Now, you have got me. I do not recollect.

Q. Did all of the La Raut family go together?

A. No, there was Mr. La Raut and his wife, I suppose. I think they were the first, but I wouldn't swear to it, and then Mr. Dunbar brought the two young ladies.

141 Q. When did Roach and Jordan go?

A. I think they were the last ones. I am pretty sure that they were, but I wouldn't be positive about it.

Q. Was there any one else with you as locator or cruiser?

A. No, sir. Mr. Dunbar came with the two young ladies.

Q. Was Mr. Robinson there at the time?

A. He was there with Mr. Dunbar, yes.

Q. In his request that you show these people the land, did Mr. Kelly make any request that you show it to all of them at the same time?

A. No,—just these people that came there,—There was two at a time.

Q. Did you act as a witness for these people?

A. I think I did, but I did not hardly think I did until I came down here, and saw the papers, so I guess I did.

Q. Do you recall it now?

A. I think I recall being a witness for those young ladies.

Q. Do you know how many trips you made to Roseburg?

A. I think I made two trips.

Q. Who paid your charges or expenses for showing these people the land and going to Roseburg?

A. Mr. John Kelly paid my wages and expenses.

Q. John Kelly, a member of the firm of Booth-Kelly Lumber Co.

142 A. I suppose he is a member. Of course, I am not positive. I think he is or was at that time.

Q. You knew he was at that time?

A. I suppose he was.

Q. At that time what was Mr. Harry Dunbar doing?

A. I do not know, I was not acquainted with him until he came up there. He has been bookkeeper since that.

Q. Bookkeeper for whom?

A. For the Booth-Kelly Company.

Q. What was John Roach doing?

A. I think he was bookkeeper too. I never knew him until he came up there.

Q. How long after that was it that you saw Dunbar working for the Booth-Kelly Lumber Co.?

A. When I went down to the office I saw him working on the books.

Q. Was it a short time or long time?

A. I do not think it was over two or three weeks. It might have been longer.

Q. Did you see Roach there at that time?

A. Yes.

Q. What was he doing?

A. He was working on the books.

Q. Was that a letter written to you that John Kelly sent you?

A. I think only the numbers, and a statement with his name to show these people that land.

Q. Did the Company pay you for that labor?

Counsel for defendant objects to the question on the ground that the witness has stated that Mr. Kelly paid him.

143 Q. How did he pay you?

A. I think it was three dollars or two and a half.

Q. How did he pay you?

A. He paid me in money if I am not badly mistaken.

Q. Where did he pay you?

A. I do not know. I think part of it was paid in Eugene.

Q. At the office of the company

A. Yes.

Q. At the office of the Booth-Kelly Lumber Company?

A. Yes.

Q. Did you ever perform any services for Mr. John Kelly independently of the company?

A. I do not know. He was the one I always done business with.

I do not know whether he was doing it for the company, or doing it for himself. I cannot say as to that.

Q. Who did you understand you were employed by?

Counsel for defendant objects to the question as immaterial and irrelevant.

A. Well, I supposed it was the company, but I do not know.

Q. You did all your business with Mr. Kelly?

A. Sure.

Q. Do you know what office he held in the company at that time?

A. No, I do not.

144 Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. How long had you been in the employ of the Booth-Kelly Lumber Co.?

A. I think it was probably about a year or about a year and a half since I first commenced work for them at that time.

Q. Now, you say that you did that work principally for Mr. Kelly?

A. Well, as I said before, he is the man that paid me. That is all I know. I supposed he was the company.

Q. Did you have any conversation with these people that came there with these numbers about showing them the land?

A. But very little, because I was not acquainted with them. I simply showed them the land that I was directed to show them, that was all.

Q. You understood that they intended to enter the land?

A. Sure.

Q. They did go to Roseburg and file on the land did not they?

A. Yes, sir.

Q. You were a witness for them when they proved up?

A. Yes.

Q. Now you have worked for John Kelly for a number of years in cruising.

A. It has been ten or eleven years something like that since I first went to work.

145 Q. You did a good deal of his business individually, as well as some for the company?

A. I suppose so. That is all I know about it.

(Witness excused.)

Mrs. M. S. APPLESTONE, is called as a witness for the government and being first duly sworn testified as follows:

Direct examination.

(Questions by JOHN McCOURT:)

Q. Where do you live Mrs. Applestone?

A. Lewistown, Idaho.

Q. How long have you lived there?

A. I have lived there three years.

Q. Do you know Mrs. Alice La Raut?

A. Yes.

Q. And Stephen La Raut?

A. Yes.

Q. What relation is Mrs. La Raut to you?

A. My mother.

Q. And Mr. La Raut?

A. My step-father.

Q. Do you know Ethel and Lucy La Raut?

A. Yes.

Q. One of them now being Mrs. Lewis?

A. Yes, sir.

Q. Which one of them is Mrs. Lewis?

A. Ethel.

Q. Where were you living in 1902, and prior thereto in 1901?

146 A. In 1901 I was living in Portland I think. Part of the time with my mother and part of the time in Portland.

Q. Where was your mother living at that time?

A. At Saginaw, Oregon.

Q. Do you remember being up at your mother's home in the spring of 1902 and summer?

A. Yes, sir.

Q. Do you know anything about the entry of some timber land there by your mother?

A. Yes, sir.

Q. And the other members of the family?

A. Yes, sir, I do.

Q. Just state now what you know about that, and what information you have about it.

A. Well, at the time I was there, they had come off from the claim.

Q. You mean they had been out to visit their claims?

A. Yes, sir, they had been out to see the land.

Q. Well, who had been to see the land?

A. My mother and step-father had been.

Q. Who else?

A. And Ethel. That is, I know that, because they were at the house there and I knew that they had taken up a timber claim each.

Q. Now, did you have any conversation, or was there any conversation conducted and carried on in the family there which you heard in relation to these timber claims?

A. Yes, they talked about them.

Q. At different times?

147 A. Yes, sir.

Q. What did they say about the timber claims—how they happened to take them up, and all about it.

A. I talked to my mother about it specially, and she told me that she had taken up a claim, and had taken it up for Mr. Booth.

Q. What Mr. Booth?

A. Robert Booth.

Q. How did she say she come to take it up for Robert Booth?

A. I do not remember just the words.

Q. Go ahead now and state the conversation that occurred there without being asked any questions, just go on.

A. Well, we had talked about it so many times, at different dates, and she said that she had taken up a claim for Robert, and they were to be paid \$100.00—that is mama was to be paid \$100 for her claim.

Q. Who else was present when you had this conversation with your mother?

A. I do not remember that there was anybody.

Q. State whether or not Mr. Stephen La Raut and Ethel La Raut was present at any of these conversations?

A. I do not remember that they were. I remember that they were in the house.

Q. You do not know whether they heard the conversation or not?

A. No, I do not.

Q. What further occurred in regard to these claims?

148 A. In what way?

Q. Do you know anything about the \$100.00 being paid?

A. Yes I know mama was paid \$100.00.

Q. How do you know that?

A. Well, she told me.

Q. Did you see the money or evidence of it?

A. Yes I saw the money.

Q. Do you know anything about Mr. La Raut and Ethel La Raut's claim and the payment for them?

A. No, I do not know anything about theirs.

Q. Do you recall the trip to Roseburg to make the proof for them?

A. Yes, I was there at the time.

Q. Did anything occur prior to that in relation to the entries, I refer to the receipt by your mother and step-father, and step-sister of forms for making final proof, showing the questions and answers?

A. Yes, I remember them having the questions.

Q. All of them?

A. Mama especially I know about. I think they were for my mother and step-father, because they had filed at that time and were to prove up.

Q. Have you examined the final proof testimony given by your mother in relation to this timber and stone entry of hers?

A. Only that I saw the questions that they should answer.

Q. Do you know whether or not the paper that she had there and your step-father had there at that time contained questions that would be put in these final proof papers?

149

A. Yes.

Q. What conversation did you and your mother have in relation to those papers,—those final proof papers?

A. Well, at that time, I could not understand it because the questions were answered.

Q. What did you say about it?

A. I asked her why they were answered.

Q. What did she say?

A. I do not know what answer she gave me.

Q. Was this before she had gone to Roseburg to make her proof?

A. Yes, sir.

Q. Did she say who had sent her those papers?

A. Yes, sir.

Q. Who did she say?

A. Robert Booth.

Q. What relation, if any, does she bear to Robert Booth?

A. Sister-in-law.

Q. Where is your mother and step-father now?

A. In Canada.

Q. What part of Canada?

A. Alberta.

Q. And this money that your mother had there, did she have that before she went to make proof,—before she went down to Roseburg to make final proof, or did she get it afterwards, or do you know?

A. I do not remember.

150 Q. Was it in the neighborhood of the time she made proof or do you know?

A. I do not recall whether it was before or after,—I do not remember whether it was before she proved up, or afterwards.

Q. Do you recall whether or not the whole family went down to make proof at the same time, or on different days some of them?

A. They went on different days, I think.

Q. What members went together?

A. My mother and step-father went together.

Q. And the two girls went together?

A. I do not remember.

Q. They did not go at the same time your mother and step-father went?

A. No.

Q. Where was Ethel living at that time?

A. In my mother's house.

Q. Where was Miss Lucy La Raut living?

A. Living near Wilbur, Oregon.

Q. In whose employ was she at that time?

A. I do not think she was in any one's employ?

Q. Did Lucy live at Saginaw?

A. She lived with her mother. It was Lucy who lived with her mother.

Q. Where did Lucy live?

A. She lived near Wilbur.

Q. Did either one of those young ladies live at your mother's home?

A. Ethel lived at my mother's home.

Q. Ethel lived at your mother's home, and Lucy lived

151 with her mother?

A. Yes.

Q. How long was it that these papers were received by your mother containing questions and answers prior to the time that she went down to Roseburg to make proofs?

A. A few days.

Q. Do you know whether or not Lucy received a similar set of papers?

A. I do not.

Q. Do you know whether or not your step-father received a similar set of papers?

A. It was step-father and mother that received them.

Q. Did your step-father ever discuss the matter of his taking up a timber claim?

A. Yes, sir.

Q. In your presence?

A. Not particularly that I remember of.

Q. Was Ethel present at any time when your mother was discussing the manner in which the timber claims were being taken?

A. Not that I remember of.

Q. What was your step-father doing at that time?

A. He was working for the Booth-Kelly Company.

Q. And your mother?

A. Keeping house.

Q. Do you know what was their financial condition at that time?

A. Yes I know that they were very poor at that time.

152 Q. And how about the Misses La Raut, Lucy and Ethel?

A. I do not know.

Q. You do not know what their financial condition was?

A. No.

Q. Did you know a young man by the name of Harry Dunbar?

A. Yes, sir.

Q. Do you know what he was doing at that time?

A. He was bookkeeper for the Booth-Kelly Company.

Q. What connection did Robert Booth have with the Booth-Kelly Lumber Co., if you know.

A. I do not know.

Q. What did your mother say that she was going to get besides this \$100.00,—what was Booth going to pay in addition to the \$100.00?

A. That was all she was to receive.

Q. Who was to pay the expenses for the land and all that?

A. Mr. Booth.

Q. Did she assent to that?

Counsel for defendant- objects to the question as leading.

A. Yes, sir.

Q. Do you know who did pay her expenses to Roseburg?

A. Yes, sir.

Q. Who.

153 A. Mr. Booth.

Q. Do you know when it was that Mr. Booth promised

to pay your mother for taking this claim, with relation to the time she filed on the land?

A. No I do not.

Q. Do you know whether that was before or after she filed on it?

A. No I do not know.

Q. You do not know about that?

A. No.

Q. Did she say anything about who selected the land for them or for her?

A. No I do not recall that.

It is stipulated and agreed by and between the parties hereto, that Robert A. Booth, was manager of the Booth-Kelly Lumber Company at the time in controversy in this suit, and that John Kelly was Vice-President, or John F. Kelly was Vice-President, of the corporation during the times in controversy.

Cross-examination.

(Questions by A. H. TANNER:)

Q. How long have you lived in Idaho?

A. Three years.

Q. Where did you live before that?

A. I lived in Portland and with my mother in Saginaw.

Q. You say you were living with your mother at the time they took these timber claims?

A. I was not living there, but I was there at the time.

154 Q. You were there visiting at that particular time?

A. Yes.

Q. How long were you there at the time they were about to take up these timber claims?

A. I do not remember how long I was there.

Q. Well, were you there while they were taking the claims,—when they went out to see them, and so on, or did you come after that?

A. I came the day after they came from the land.

Q. Had they been living on the land?

A. No, they had been away one day.

Q. They had been up to the land before you got there?

A. Yes before I got there.

Q. And you talked with your mother about taking up the timber claim?

A. Yes, sir.

Q. And she told you that she was going to take up a claim did she?

A. She told me she had taken one.

Q. And that your step-father Mr. La Raut had also taken a claim?

A. Yes, sir.

Q. And that they were going to Roseburg to prove up,—did she tell you about that?

A. I was there at the time they went.

Q. You were there at the time they went to Roseburg to file on the land, or make application to purchase the land,—that was the time they came from the land?

155 A. I do not remember whether it was to file or prove up on them.

Q. Were you there when they went to Roseburg to file on the lands?

A. I do not recall whether it was the time they went to file on the land, or whether it was to prove up.

Q. You say you were there at the time they came back from inspecting the lands?

A. Yes.

Q. In the natural course of events, they would have gone to Roseburg to file on the land?

A. Yes.

Q. Were you there then?

A. Yes.

Q. How long were you there at that time?

A. I do not remember.

Q. Can you state anywhere near how long you were there?

A. No, I do not remember.

Q. Now, when was the first conversation that you had with your mother about the matter?

A. It was the day I got there.

Q. That was the day she told you she was going up to file on the claim?

A. I do not know as she told me, I was there when she went.

Q. What did she tell you she was going to do?

A. I do not recall whether she said they were going to file, or prove up. I think it must have been the time she filed.

156 Q. Did they go to Roseburg a day or two after that?

A. I do not recall how long after that it was that they went.

Q. Was that the extent of the conversation? The day you got there, or the next day, that she had taken up a timber claim?

A. It was generally talked about.

Q. Well, in what way do you mean. Do you mean she told you she was going to take up a timber claim?

A. She told me she had taken up a timber claim.

Q. Now, were you there when they went to Roseburg to prove up.

A. I was only there once when they were in Roseburg.

Q. Do you know whether it was the time they went to Roseburg to file on the land or whether they went there to prove up, that you were there?

A. No I do not recall which it was.

Q. Now the conversation that you had about their filing on these claims was with your mother mostly as I understand it?

A. Yes.

Q. You did not talk with any of the rest of the family about it?

A. Not that I remember of.

Q. You say she told you that she had taken up a claim, and

what was it you said she said about Robert Booth—give her exact language now if you can.

A. Well, she told me that they were taking up a claim
157 for Robert.

Q. Is that all she said about it?

A. No.

Q. Well, state the rest of it.

A. Well, she said they had taken up a claim for Robert, and she also told me what they were to get for it.

Q. What did she tell you they were to get for it, or that she was to get for hers?

A. She told me that she was to get \$100.00.

Q. Did she tell you that she was to get anything more for it?

A. No.

Q. Do you know whether she did get anything more?

A. Yes she got \$100.00 for it. I did not know at the time, but I know she got fifty dollars afterwards.

Q. Did not she get some more at another time?

A. Not that I know of.

Q. You do not know whether she did or not?

A. Well, up to six months ago, I knew that she had not.

Q. When did they go to Canada?

A. About six months ago.

Q. You know she did get an additional payment besides the \$100.00, that she spoke of?

A. Yes.

Q. You did not have any such conversation with your step-father that you say you had with your mother?

A. Not that I remember of.

158 Q. You never had any such conversation with Ethel?

A. No, sir.

Q. Or with Lucy?

A. No, sir.

Q. You do not know anything about why they took up their timber claims or anything about it?

A. I do know why,—my mother told me.

Q. I mean, outside of what your mother told you?

A. No, I do not know. My step-father took up his claim for the same reason that my mother did.

Q. Who told you why he took up his claim,—did he ever tell you himself, or was it your mother?

A. I do not recall whether he did or my mother did.

Q. Is it not a fact that you are testifying now entirely from what your mother told you about it.

A. Yes, I suppose, and what I knew.

Q. Do you know whether Robert Booth ever talked to your mother or your father about it at all?

A. I do not.

Q. You do not know who it was who suggested to them that they take a timber claim do you?

A. Yes I do.

Q. Well, where did you get that information from?

89

A. I got it from my mother.

Q. What did your mother tell you?

A. She told me that Robert had asked them to take up a claim.

Q. That Robert Booth had asked her?

159 A. Had asked her and my step-father and Ethel, they were the ones that were there.

Q. Do you mean to say that your mother told you Robert Booth had talked to her?

A. He did not talk to her personally that I know.

Q. Your mother did not tell you that Robert Booth had ever talked to her personally about it did she?

A. No, she did not.

Q. Now, you say that you saw this \$100.00 that your mother had there?

A. Yes, sir.

Q. When was it that you saw that?

A. I do not recall the time.

Q. Was it after she had proved up on the claim?

A. I do not remember.

Q. Is there anything by which you can fix the time about when it was?

A. No I do not remember whether it was before or afterwards.

Q. Did she tell you where she had gotten this \$100.00?

A. Yes, sir.

Q. What did she say about it?

A. She said that Robert had given it to her.

Q. That Robert had given it to her personally?

A. To them, I do not know which person he gave it to.

Q. Did she tell you which person?

A. No.

Q. Did she tell you that Robert Booth had given it to
160 either of them?

A. Yes, she said that Robert had given it to them.

Q. Was there more than \$100.00 of it—did you see the \$100.00 that your step-father had too?

A. No.

Q. You do not know whether he had a \$100.00 or not?

A. Yes.

Q. How do you know?

A. Because my mother said he had and he said he had.

Q. Did he tell you about where he had gotten it?

A. Yes, he talked about it.

Q. Who did he say had paid it to him?

A. I do not remember, he told me but I do not remember. It was not kept a secret.

Q. Did he tell you that Robert Booth had paid it to him?

A. I do not recall whether he told me or not. I remember it was talked about.

Q. Talked about between you and your mother and the children.

A. No my step-father talked about it. It was not kept from me,—was not considered a secret.

Q. How long did you continue to live at Saginaw and visit your people there?

A. I never lived there.

Q. How long did you continue to visit your people there?

A. Until four years ago.

Q. Then you went to Idaho?

161 A. No, sir I have only lived in Idaho three years.

Q. Three years?

A. Yes.

Q. Where did you live the other year?

A. In San Francisco and Spokane, Washington.

Q. Anywhere else?

A. No sir.

Q. When did you first tell anybody else about hearing these conversations that you talked about with your mother?

A. I do not remember.

Q. Well, about when was it? Do you remember about when it was?

A. No I do not remember.

Q. Well, who was it that you talked to about it outside of the family?

A. I do not know that I talked to anybody about it.

Q. You have not talked to anybody at all except your mother and father?

A. I might have spoken of it.

Q. Well, you know whether you did or not? I want to know whether you did or not talk to anybody else about it,—you must know whether you did or not?

A. Yes, I suppose I did speak of it, to probably several different ones, but I do not recall who.

Q. Did you talk to any special agent of the government about it?

A. I do not know. I have spoken to Mr. McCourt.

162 Q. Mr. McCourt, when did you talk to him,—lately?

A. Yes.

Q. Is he the first person you talked to about it outside of your mother and father?

A. He is the first person that I talked to in a business way,—I guess that might do.

Q. What do you mean by "in a business way," what do you mean by that?

A. I mean that I was asked questions and I simply answered them, that is all.

Q. How did they come to find out that you knew anything about it?

A. I do not know.

Q. When was it you talked with Mr. McCourt about it first?

A. I do not remember just how long ago.

Q. Was it about the time that Robert Booth was being tried here?

A. Yes sir.

Q. Did the Government have you subpoenaed here as a witness at that time?

A. Yes sir.

Q. Were you called as a witness?

A. No sir.

Q. Was that the time that Mr. McCourt talked to you about these entries?

A. Yes sir.

Q. Did you talk to any land agent about it?

A. No sir.

Q. Have you talked to any land agent since, or any
163 special agent of the government?

A. No sir, I have not.

Q. As I gather from your testimony, your mother was a sister of Ethel La Raut and Lucy La Raut?

A. No sir. My Step-father is a brother of theirs.

Q. At the time that you came down here when Mr. Booth's trial was on—how did you happen to come at that time?

A. I was subpoenaed.

Q. Subpoenaed by the government?

A. Yes sir.

Q. And then you say after you came down here Mr. McCourt first talked to you about it?

A. Yes sir.

Q. Did you talk to anybody up there about it?

A. No, sir.

Q. How did they come to subpoena you,—do you know?

A. I do not know.

Q. You had not talked to any one else, except your mother and father about it before that time?

A. I said I might have talked, or spoken about it to different ones.

Q. How long were you here at the time you were subpoenaed?

A. I do not remember.

Redirect examination.

(Questions by Mr. JOHN MCCOURT:)

Q. Did your mother state to you anything about the arrangement that Ethel La Raut had made for taking up her timber claim and how much she was to get for hers?

164 A. Yes, she said it was the same.

Q. The same as she was getting?

A. Yes.

Q. You say your mother got fifty dollars more—when was that?

A. I do not know just how long it was ago. I think probably eight or nine months. It was that way because she did not tell me the exact date.

Q. You say eight or nine months?

A. Eight or nine months ago.

Q. How was it with relation to the time you were down here as a witness?

A. What?

Q. The payment of this additional fifty dollars—when was it made, or received by your mother in relation to the time you were down here as a witness,—was it after that, or before you were down here as a witness at the time Robert Booth was being tried a couple of years ago?

A. I really do not know—I understood it was afterwards.

(Witness excused.)

LUCY LA RAUT, is called as a witness for the government and being first duly sworn testified as follows:

Direct examination.

(Questions by Mr. JOHN McCURT:)

Q. Where do you live?

A. In Eugene at present.

Q. What relation if any are you to Mr. Robert Booth?

165 A. I am sister-in-law.

Q. And to Ethel La Raut?

A. I am Ethel's older sister.

Q. And to Mrs. Alice La Raut?

A. Sister-in-law.

Q. Stephen La Raut was your brother?

A. Yes sir.

Q. What occupation were you engaged in February, 1902, and for a few months prior thereto?

A. I was at home with my parents.

Q. When did you become post-mistress at Saginaw?

A. You have the wrong woman.

Q. That was your sister?

A. That was my sister Ethel.

Q. When was she post-mistress there?

A. She was post-mistress there in 1902. I do not remember how long prior she left.

Q. Was she post-mistress at the time you took this timber claim.

A. Yes.

Q. Did she have any other employment besides being post-mistress?

A. No.

Q. Was not she clerking for the Booth-Kelly Company?

A. Yes.

Q. Do you recall the instance of taking up a timber claim there?

A. I do.

166 Q. At that time you were living at home with your parents?

A. I was.

Q. Who took you out to see the timber claim?

A. Mr. Dunbar.

Q. How long did it take you to go out there?

A. One day.

Q. How long after you had gone to see the claim was it before you filed on the land?

A. I think we went the next day probably,—a day or two any-way.

Q. Do you have any recollection about it?

A. Yes, I recall,—I think it was the day after that or probably two days.

Q. Who accompanied you to Roseburg?

A. My sister Ethel and Mr. Dunbar.

Q. Harry Dunbar?

A. Yes sir.

Q. Did Mr. Thomas Roach file at the same time?

A. No, he did not.

Q. Where did you go from to go to Roseburg?

A. I went from Saginaw, because it was from Saginaw that I went up and took a timber claim. I went right from Saginaw to Roseburg to file on it.

Q. Did your sister visit her claim at the same time?

A. Yes.

Q. With Mr. Dunbar also?

A. Yes sir.

Q. Then you all later went to Roseburg to file?

A. Yes sir.

Q. Did you go to visit the claim again after you had filed?

167 A. No sir.

Q. Was that the only time you were there?

A. Yes sir.

Q. How did you come to take up a claim?

A. My sister Ethel notified me that we could take up a claim. She knew that I would like to do so,—that is how I came to take up a claim.

Q. Did you have any conversation with anybody else about it before you went to look at the land?

A. No, sir.

Q. Well, how did you happen to have Mr. Dunbar come out there?

A. I really cannot say.

Q. You had nothing to do with securing him to go out?

A. No, sir.

Q. And do you recall anything about publishing notice of final proof?

A. Yes, it was published.

Q. Did you have anything to do with that?

A. I do not recall,—I do not know.

Q. Do you know who attended to it?

A. I think Mr. Booth did.

Q. Mr. Robert Booth?

A. Yes.

Q. How did he happen to attend to that?

A. Well, I suppose he did, I think he was the first to tell my

sister that he knew where she could get some land, and she had spoken to me about taking up a timber claim.

168 Q. You assume that you do not know?

A. No, I do not know—I cannot swear to it, but I think so.

Q. Do you know how you came to go to Roseburg to make your final proof,—how you ascertained the time to go?

A. I suppose I was notified, but I do not know who notified me.

Q. Who went with you?

A. Mr. Dunbar, Ethel and myself.

Q. Anybody else?

A. I do not recall.

Q. Was your sister one of your witnesses?

A. Yes, and Mr. Brumbaugh, I think.

Q. Well, did Mr. Brumbaugh go down to Roseburg when you went down?

A. I do not know.

Q. He showed up all right?

A. He was one of our witnesses.

Q. Was Mr. Dunbar one of your witnesses?

A. Yes.

Q. You say he was one of the witnesses?

A. Yes.

Q. Was Mr. Dunbar also a witness for your sister?

A. He was.

Q. Were you two young ladies witnesses for Mr. Dunbar?

A. Yes.

Q. What makes you think Mr. Brumbaugh was a witness?

169 A. Well, I do not recollect, he was our cruiser, I do not know whether he was a witness or not.

Q. You only have to have two witnesses?

A. I do not know.

Q. You do not recall much of the details?

A. No.

Q. Well who paid your expenses down?

A. My father furnished some of the money, and Mr. Booth the other. He said he would advance the money to us, which he did.

Q. What quantity of the money did your father furnish?

A. I do not recall whether it was half, I do not recollect.

Q. Do you recall how much he furnished?

A. Something like twenty or thirty dollars.

Q. Did you repay that to him?

A. Yes.

Q. When did he furnish that, before you went down, or when you went down to make the proof?

A. I say I cannot tell whether it was when I went down to file, or when I went down to prove up.

Q. Do you recall publishing the notice?

A. I did not pay that.

Q. You did not pay any part of the purchase money for the land? That is of the two dollars and fifty cents an acre to pay for the land?

A. No.

Q. Did you have that money yourself? Or did Mr. Booth furnish it to you?

A. He furnished it.

Q. How, in currency, gold or a check?

170 A. I do not know,—I do not recall.

Q. Do you recall carrying any money down there with you?

A. No, sir I do not. Whether I paid that money over, I cannot say.

Q. Do not you remember that Mr. Dunbar had a draft?

A. Mr. Dunbar was there, but whether I paid the money myself, or Mr. Dunbar, I do not know.

Q. Any way he came there the day that you proved up?

A. Yes.

Q. Now, how long after you had made the proof was it before you deeded the land to the Booth-Kelly Company, or to Mr. Booth or whoever you did deed it to?

A. I do not know. I cannot recall when the deed was made out.

Q. Was it a short time?

A. I cannot recall.

Q. Do you remember making any deed at all?

A. Yes sir.

Q. Do you remember making more than one deed?

A. Yes, I know when the last deed was made, I do not recall the first.

Q. When was the last deed made?

A. That was made in 1907.

Q. In 1907?

A. Yes in September I think.

Q. What was the purpose of making two deeds?

A. Well, I do not know anything concerning that.

171 Q. You know there were two deeds?

A. Yes there were two deeds.

Q. How much money did Mr. Booth give you when you made the first deed?

A. I do not know, I do not remember. I do not know whether I got any when I made the first deed.

Q. Did you not get \$100.00?

A. I got \$100.00 some time along about that time. I do not just recall when.

Q. Well in the neighborhood of the time when you got the \$100.00, you gave a deed?

A. Yes.

Q. How long was it after you made that deed before Mr. Booth returned it to you?

A. I do not recall.

Q. About a year or a year and a half?

A. I would not like to state because I do not recall.

Q. Well it was some time related to the land fraud agitation that was done was not it?

A. It might have been.

Q. Do not you recall that that deed had some relation to that matter.

A. Yes.

Q. You do not know whether or not that deed was ever recorded?

A. No, I do not.

Q. Who was it made out before? Do you remember if Mr. Harry Dunbar was connected with the execution of that deed? Was he the Notary Public.

A. I cannot tell you.

Q. Where did you make it,—did you go to the office of the company?

A. I do not remember about being at the office of the company.

Q. Was the deed sent out to where you were living at that time?

A. I recall that the deed was sent to me.

Q. You were living with your father and mother?

A. Yes.

Q. Where were you living then?

A. I was living out from Roseburg about twelve miles.

Q. Then would you have gone to Roseburg to execute the deed?

A. Yes.

Q. Do you remember seeing Henry Booth in connection with it?

A. I recall now.

Q. Was it Henry Booth that gave you the \$100.00, or Mr. Robert Booth?

A. I think it was Robert Booth, Mr. R. A. Booth.

Q. Did he send that along with the deed, or had you gotten it some time before?

A. I cannot say.

Q. Now, were you living down here at this place twelve miles from Roseburg at the time you gave the deed?

A. Yes.

Q. You came up from there to Saginaw to where your sister was?

A. Yes.

Q. Who asked you to come up there to look at the land?

A. My sister.

Q. Did she write to you or phone you?

A. She phoned me.

Q. Did you see Henry Booth at that time?

A. No. I would not come to Roseburg there was a nearer Station called Wilbur.

Q. Did you understand that you were to get this \$100.00 before you came up there?

A. No, I did not.

Q. What did you suppose you were going to get?

A. Well, I supposed that the money would be furnished me because I was not at that time able to take a claim and I had to get some one to furnish the money, and Mr. Booth furnished the money as he had done before.

Q. Had you taken a claim before?

A. No.

Q. And did you call upon him to help you?

A. That was about it.

Q. How long was it after that that you knew that you were going to get \$100.00?

A. Well, there was no exact sum said about the timber claim.

Q. There was not?

A. No.

Q. You did expect to get something from Mr. Booth for the claim?

A. I knew that he was to advance me the money to pay for the claim.

174 Q. This \$100.00 was in addition to what you needed to pay for the claim?

A. Yes, I got \$100.00.

Counsel for the government offers in evidence a certified copy of the deed referred to, and the same is received and marked Government's Exhibit "G" and is in words and figures as follows:

Warranty Deed.

This Indenture, Witnesseth: That Lucy La Raut, unmarried, for and in consideration of the sum of Ten (\$10.00) Dollars to her paid does hereby bargain, sell and convey, unto the Booth-Kelly Lumber Company, a corporation, the following described premises, to-wit:

Lots One (1), Two (2), Seven (7), and Eight (8), being the Northwest (N. E. $\frac{1}{4}$) quarter of Section Twenty-Eight (28), township twenty-one (21), South of Range Two (2), West of the Willamette Meridian, situated in Lane County, Oregon, and containing One Hundred Sixty-Two and eighty-two hundredths (162.82) acres more or less.

To have and to hold, the said premises, with their appurtenances unto the said The Booth-Kelly Lumber Company, its successors and assigns, forever. And the said Lucy La Raut does hereby covenant to and with the said The Booth-Kelly Lumber Company, its successors and assigns, that she is the owner in fee simple of said premises, and that they are free from all incumbrances and that she will warrant and defend the same from all lawful claims whatsoever.

175 In witness whereof, I have hereunto set my hand and seal this 6th day of September, A. D. 1907.

LUCY LA RAUT. [SEAL.]

Done in the presence of:

J. A. GRIFFIN.

H. A. DUNBAR.

STATE OF OREGON,
County of Lane, ss:

On this the 6th day of September A. D. 1907, personally came before me, a Notary Public in and for said county the within named

Lucy La Raut to me personally known to be the identical person described in, and who executed the within instrument, and acknowledged to me that she executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 6th day of September, A. D. 1907.

[NOTARIAL SEAL.]

H. A. DUNBAR,
Notary Public for Oregon.

Filed for record Sept. 7, 1907, at 8 A. M.

E. U. LEE,
County Clerk,
By ———, *Deputy.*

STATE OF OREGON,
County of Lane, ss:

I, E. U. Lee, County Clerk, and Ex-Officio Recorder of conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Warranty Deed with the original, and that the same is a correct transcript therefrom, and of the whole of said original warranty deed as the same appears
176 of record at page 291, Book No. 71, Lane County Deed Records, now in my official care and custody.

In witness whereof, I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[SEAL.]

E. U. LEE,
*County Clerk and ex-Officio Recorder of Con-
veyances in and for Lane County, Oregon.*

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. You say that Robert Booth is your brother-in-law.

A. Yes, sir.

Q. And he has helped you along from time to time has not he for some years?

A. Yes he has.

Q. And he did that before you took this timber claim?

A. Yes, sir.

Q. And you say that Ethel told you that you could get a timber claim?

A. She did.

Q. You had told her that you would like to take a timber claim?

A. Sure.

Q. You knew that you were entitled to take a timber claim, and you would like to exercise your right to take a timber claim?

A. Yes, sir.

177 Q. And you went out to look at this land with a view of taking a claim?

A. Yes sir.

Q. And you did go up and file on it?

A. I did.

Q. Now, prior to the time you filed on it, had you had any talk or conversation with Mr. Booth about it at all?

A. No one except my sister.

Q. Your sister Ethel?

A. Yes sir.

Q. And you say that your father advanced you the money to pay part of the final fees?

A. Yes. I do not know whether it was for filing or proving up.

Q. It was expenses and so on?

A. Yes sir.

Q. And you used the money to pay the expenses of filing on the land?

A. I do not know whether it was for filing, or proving up, I cannot say that really.

Q. Now, did you have any talk with Robert Booth yourself about advancing money to pay for the land after you had filed on it?

A. No.

Q. Whom did you talk to?

A. My sister. She said he had advanced the money for her and would do the same by me if I wanted to secure a claim.

Q. How were you to secure him for this money that he advanced,—what was said about giving any security for the
178 money that he advanced to enable you to pay for the claims.

Were you to deed the land to him, as security or anything of that kind,—what was the understanding about that?

A. I guess that is right, that is the first deed.

Q. Was that when the first deed was given?

A. Yes that is right.

Q. That was to secure him for money that he had advanced to pay for the land was not it?

A. Yes sir.

Q. You say you do not recall the date of that deed.

A. No, I do not recall the date of the first deed.

Q. Now, after you had your timber claim you got some more money since from Mr. Booth.

A. I have, yes, besides the \$100.00.

Q. Besides the \$100.00?

A. Yes.

Q. And you have received money from him from time to time?

A. Yes.

Q. And you expect some more money out of the timber claim?

A. Yes I do.

Q. Was any money paid at all when this first deed was made?

A. I cannot recall.

Q. As a matter of fact that first deed was made as a mortgage was not it to secure the money that was advanced?

A. Yes sir.

Q. As you have already stated?

179 A. Yes, sir.

Q. At whose request was it that you made the second deed?
Was it at the request of Mr. Booth?

A. Yes, sir. Because I was really depending on Mr. Booth to do what he could for me.

Q. Was that to continue the same arrangement as security for advances that he had made? There was no settlement or payment of balance at that time was there?

A. No.

Q. And this deed was made simply at his request to continue the same arrangement?

A. Yes.

Q. As security for money that he advanced, or would advance to you until such time as the land could be sold and you could get your money out of it?

A. Yes.

Q. Is not that the fact?

A. That is right.

Q. As a matter of fact, you are still the owner of the land are not you?

A. I am.

Q. And this deed is simply held as a mortgage to secure them for advances that they have made and were to make to you?

A. Yes.

Q. Now, at the time you filed on your claim, did you take it for the purpose of making what you could out of it for yourself and for your own benefit?

A. Certainly.

Q. Did you take the claim for the purpose of selling it
180 when you saw fit? And for what you could get out of it for yourself?

A. I did.

Q. Did you prior to filing on your claim promise anybody, Mr. Booth, or anybody else, to sell it to them, or deed it to them?

A. No, sir.

Q. Did you understand at the time you filed on the claim, that you were taking it for the benefit of yourself, or for the benefit of some one else?

A. For myself.

Q. Had you made any contract or signed any paper or made any agreement whatever before you took the claim, or before you proved up on it to sell it to anybody else?

A. No sir.

Q. Or to sell any interest in it, or the timber thereon?

A. Only this way,—No, I had not made any contract or anything like that.

Q. You had not agreed to sell either the land or the timber had you?

A. No, I had not agreed to do it,—no.

Q. Was any other person or corporation interested in any way whatever in the taking of that claim?

A. No sir.

Q. Now, in going to Roseburg, and in looking after you out there

to select the land Mr. Brumbaugh was acting for you and you were depending on him to show you where the land was? Were not you?

A. I was.

181 Q. And Harry Dunbar acted for you in going to Roseburg and filing and paying the money, and so?

A. Yes, but I cannot recall whether I paid it, or whether Harry did. I do not know. I can't say.

Q. You had made arrangements with Mr. Booth to get the money for that before that time?

A. Yes.

Q. That is before you went up to prove up on it?

A. Yes.

Q. But just how the money was to be provided you did not know?

A. I did not know, I could not say.

Q. Is it not a fact that what Mr. Booth did what he did simply in a friendly way as a relative to help you along and help you get the benefit of a timber claim?

A. Yes sir.

Q. If anybody had come along and wanted to buy your claim from you, would you have felt at liberty to sell it?

A. Yes, I suppose I would have talked to Mr. Booth and asked his advice because I was depending on him.

Q. He had no string on it, or any right to demand any deed from you at that time?

A. No.

Q. Except as security for the money that he would advance you?

A. That is all.

182 Redirect examination.

(Questions by Mr. JOHN McCOURT:)

Q. You say Mr. Booth had been helping you along financially prior to that time,—in what way and to what extent?

A. Well, he had given me money at different times.

Q. For what purpose?

A. I do not recall for what purpose.

Q. Just small sums?

A. Yes.

Q. Did you ever keep any account of them since that time or were they just mere gratuitous on his part?

A. That was all.

Q. How long had you been yearning for a timber claim?

A. I cannot say as to that.

Q. What efforts had you made prior to that to get a timber claim?

A. I cannot say that I had ever made any great effort, but I had expressed a wish to my sister and she being in the employ of the Booth-Kelly Company had told me that she would notify me when she found she could get a claim.

Q. Did you try to make any selection, or did you take a claim that some one showed you?

A. I was depending on Mr. Booth. I did not think he would show me a claim that did not amount to anything.

183 Q. You did not know how much timber you got on your claim or anything about it?

A. I do not know.

Q. Did you ever go back to it?

A. No.

Q. Did you ever try to sell it? In your life?

A. No.

Q. Never paid any attention to it since you took it up?

A. No, from the simple reason that it was the understanding that the company has claims up there near mine and it was the understanding that if they sold their claims, my claims was to go with theirs.

Q. Did you put your claim in?

A. No.

Q. Did you pay any taxes on it?

A. No.

Q. Do you know who has been paying those taxes?

A. No, I do not.

Q. Do not know anything about that?

A. No.

Q. Did Mr. Booth pay you that \$100.00, before you executed that first deed?

A. I do not recall about that \$100.00.

Q. You had \$100.00 some where about the time you got that deed,—as a matter of fact it was some time before, was it not?

A. I do not recall.

Q. You had not talked about the \$100.00, or agreed about the money that you were to get?

A. No.

184 Q. When was it that you got some more money?

A. I should judge about two years ago.

Q. In the meantime, however, you had received no more money?

A. No.

Q. How did you happen to get more money at that time?

A. I suppose I asked for it, was the reason that I got it.

Q. That was somewhere about the time Mr. Booth was having his trial down here was not it?

A. Really I cannot say, because I do not remember.

Q. You recollect that Mr. Booth had a trial down here?

A. Yes.

Q. And it was a short time after that, or at that time that you made the second deed?

A. Yes.

Q. Quite awhile after it? about a year after?

A. I cannot say for sure.

Q. What did you do with the first deed?

A. It was destroyed.

Q. And between the time it was destroyed and the time the second deed was made, Mr. Booth had no writing from you in regard to this land?

A. No.

Q. How much did Mr. Booth give you at the time you made this second arrangement about two years ago? The second time you got the money?

A. I think it was twenty-five dollars.

185 Q. Twenty-five dollars?

A. Yes.

Q. That is all you have gotten since?

A. Yes.

Q. And all you have gotten is \$125.00?

A. Yes.

Q. Do you recall that your sister gave a deed the same time as you deeded yours?

A. I cannot say.

Q. And who did you convey this land to the first time?

A. Answer I cannot say whether that was made to Mr. Booth or to the Booth-Kelly Company.

Q. To whom was the second deed made?

A. To the Booth-Kelly Company.

Q. The Booth-Kelly Lumber Company had not loaned you any money?

A. I do not know anything about that.

Q. Your negotiations were all with Robert Booth?

A. Yes.

Q. Did you ever have any negotiations with John Kelly?

A. No sir.

Q. You did not talk to him, did not know him in the transaction?

A. No I did not know John Kelly in the transaction.

Q. He never loaned you any money?

A. No.

Q. Nor the Booth-Kelly Lumber Company did not loan you any money.

186 A. No.

Q. As you understood, the first deed was made to the Booth-Kelly Company was not it?

A. I do not remember.

Q. Well, when that four hundred dollars was brought down there to Roseburg you do not know whether Robert Booth sent it down there, or whether the Booth-Kelly Lumber Company sent it down?

A. I do not know, I do not recall that.

Q. As a matter of fact, all the money that had been advanced you in connection with the claim,—the hundred dollars and all, came from the Booth-Kelly Company did not it?

A. I do not know where it came from. I got it through Mr. Booth.

Q. You got it from Robert Booth?

A. Yes sir.

Q. You did not get the four hundred dollars to pay the purchase price of the land from Mr. Booth, did you?

A. I thought I did.

Q. Harry Dunbar, the bookkeeper for the Booth-Kelly Company paid it?

A. He brought it to me, but it was supposed to be from Mr. Booth, that was my understanding.

Q. How did you know how much money Mr. Booth supplied you?

A. I do not understand you.

Q. Well, how much money did he advance you? You say that this deed was made because he had advanced you money,—
187 now how much money did he advance you?

A. Well, the hundred dollars. I think that was all until after the second deed was made.

Q. Did not he pay the four hundred dollars?

A. Sure, and expenses.

Q. You do not know what they were?

A. Well, I do not know that I do know the exact amount.

Q. You did not try to find out?

A. I cannot say that I did.

Q. Did you look over this timber claim and make any effort to pick out any particular claim, or did you take the one that you were shown first?

A. I cannot say as to that. I know we went over three or two claims,—went over mine and my sister's.

Q. Did you know which was yours when you were going over them?

A. Yes.

Q. Do you know that yours had only about half as much timber on it as any of the rest of them?

A. No, I do not. I do not know that yet.

Q. How old were you at that time, Miss La Raut?

A. How many years ago was that?

Q. That was in 1902, eight years ago.

A. Eight years ago I was about twenty-six or twenty-seven—it makes me awful old now.

Q. That is near enough. I want to see how long you had been trying to get a timber claim. Do you know that your brother and sister-in-law all gave deeds about the same time that you did in a similar manner that you did?

188 A. I cannot say anything about that. I think they did, but I cannot say.

Q. Were you present when your sister got her hundred dollars?

A. I cannot say anything about that. We were not in the same place. I was at home, and she was elsewhere.

Q. Well, how, you did not give Mr. Booth any note or anything for this money?

A. I did not.

Q. Never had any statement of account of the money at all?

A. No, sir.

Q. Did you take any writing back from him that he would hold this land for you, or that the Booth-Kelly Company would?

A. No, sir.

Q. Nothing of that kind?

A. No.

Q. And the first conversation that you had after you gave that

original deed about getting any more money was about two years ago, when you got twenty-five dollars more?

A. Yes.

Q. You never made any effort to sell this claim to any one?

A. No sir.

Q. To Mr. Robert Booth, or any one else?

A. No, sir.

Q. Never discussed the value of the claim?

A: We have talked about the matter, frequently since.

189 Q. In the last two years?

A. Yes.

Q. But between the times you proved up on this land, until about two years ago, you never talked about it?

A. We may have, I cannot say.

Q. Your sister, Mrs. Robert Smith, of Grant's Pass—did you ever talk with her about it?

A. In what way do you mean?

Q. That is as to the details of the transaction?

A. Yes.

Recross-examination.

(Questions by Mr. A. H. TANNER:)

Q. Had the payment of the hundred dollars or the making of the first deed any relation to each other? Or was the money simply paid along as you needed it at that time,—that is, was the deed in consideration of the hundred dollars or anything of that kind?

A. No, I cannot say that it was.

Q. And you do not recall whether the deed was made before the hundred dollars was paid, or afterwards?

A. I cannot say.

Q. Now, you knew at the time that you talked about dealing with Mr. Booth, that he was manager of the Booth-Kelly Co. did you not?

A. Yes, sir.

Q. And at that time you had every confidence in Mr. Booth and trusted to him, and took his advice about the matter of this claim, and left it to him to sell it to the best advantage for your benefit did you not?

190 A. Yes, I did.

Q. And is it not a fact, that you never have had a settlement, even to this day, as to the balance that is due you for your claim, or what should become of your interest?

A. No, sir.

Q. Have you talked to or with Mr. Booth in the last year or two about selling your claim, and has he kept you advised more or less about the prospects of selling it, or of disposing of it?

A. If they sell their land mine is to go with it.

Q. You have talked to him about the matter of selling it in that way along with the other lands of the company?

A. Yes sir.

Further direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. How was that hundred dollars paid?

A. How do you mean?

Q. Was it paid in gold or currency?

A. I do not recall.

Q. Was not it paid by check on the Booth-Kelly Company?

A. I could not say.

Q. Where were you when you received it?

A. I suppose I was home on the farm.

Q. Do not you recall now?

A. No, I do not.

Q. Did you put the money in the bank when you got it?

191 A. I cannot say. I think I gave it to my father, and he paid me interest on it.

Q. Were you paying Mr. Booth any interest for it?

A. No, sir.

Q. Mr. Booth just let you have that money, and you put it down on interest,—you did not need the money?

A. Well, I could have used it I suppose, if I had wished to.

Q. How did you happen to be getting a loan from Mr. Booth when you did not need the money? If that was all you were getting?

(Witness does not answer.)

Q. Did you answer that question?

A. No I did not.

Q. Can you answer it?

A. I cannot say that I can.

Q. The fact of the matter is, is it not, that the hundred dollars was all that you were to get for it and that you so understood it?

A. No, sir.

Q. How is it that you did not get any more money from Mr. Booth, since that time on this timber claim?

A. I have.

Q. How much?

A. Twenty-five dollars.

Q. What did you do with that?

A. I used it.

Q. You did not need any money between that time and the time you got the twenty-five dollars?

192 A. Sure, I was at home with my parents, my father was keeping it.

Q. You did not get any more money from Mr. Booth, did you?

A. No sir.

Q. He gave you back your deed?

A. Yes sir.

Q. Did you pay him back his money?

A. No.

Q. You let the matter stand as it was?

A. Yes.

Q. You had no evidence of the transaction between him and you until 1907, when you made the new deed?

A. I do not know just what you mean.

Q. I say between the time when he handed you back the first deed, and you destroyed it, you had no evidence of the transaction between yourself and himself until 1907, when you gave him another deed?

A. No.

Q. He did not give you any more money when you gave him the new deed?

A. I cannot say that he did.

Q. Then about a year, or a year and a half after that he gave you twenty-five dollars more in connection with that transaction?

A. Yes.

Q. You say he has been advising with you about this land in the last year or two?

A. Yes.

Q. Has he ever told you what the land was worth?

193 A. Well, I suppose so, I do not know whether he knew just exactly what the land was worth.

Q. I ask you if he told you?

A. No.

Q. Has any one connected with the Booth-Kelly Lumber Company ever told you?

A. No.

Q. Have you exercised any control over it?

A. No.

Q. You never have since the execution of the first deed?

A. No.

Q. You and Mr. Booth are good friends you say?

A. Yes.

Q. You counselled with him and advised with him and have great confidence in his advice?

A. Yes, sure.

(Witness excused.)

ETHEL LEWIS is called as a witness for the government, and being first duly sworn testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. You are a sister of this lady that was just on the witness stand?

A. Yes.

Q. You are older than she?

A. Yes sir.

Q. Do you remember the incident of taking a timber claim in 1902?

A. Yes sir.

194 Q. Where were you living at that time?

A. Saginaw.

- Q. And what were you doing?
A. I was post-mistress.
Q. Post-mistress at Saginaw?
A. Yes sir.
Q. Whom did you live with at that time?
A. I boarded with my brother.
Q. Mr. Stephen La Raut?
A. Yes sir.
Q. How long was it before you took up this timber claim mentioned in the papers here that you went to look at the land?
A. What?
Q. Did you go to look at this land? Included in your timber claim?
A. Yes sir.
Q. How long was it before you filed on it?
A. I do not remember.
Q. What is your best impression?
A. A few days after that we filed on the land. I do not remember how long.
Q. Are you sure you went to look at the land before you filed on it?
A. Yes indeed.
Q. You are sure of that?
A. Yes sir.
Q. Now the reason I ask you is that you testified in your final proof that you went to look at the land on the 15th, or 16th.
A. I do not remember the date.
195 Q. And you filed on the 17th?
A. Yes.
Q. You went to the land with Whom?
A. Mr. Dunbar and my sister and Mr. Brumbaugh.
Q. What was Mr. Brumbaugh?
A. He was the cruiser.
Q. What was Mr. Dunbar doing?
A. He was working for the Booth-Kelly Company.
Q. How far was this claim from Saginaw?
A. I do not know.
Q. How did you go from Saginaw to get there?
A. On horseback.
Q. Is it west or east?
A. It is east of Cottage Grove. I guess Cottage Grove is south of Saginaw.
Q. Where did you take a horse from?
A. From Saginaw.
Q. Your whole party rode horseback?
A. Yes, Mr. Brumbaugh, I do not know whether he rode or walked.
Q. How did you determine the claim that you wanted to take—how did you find out the claim?
A. Well, I had spoken to Mr. Booth that I would like to take up a claim. Everybody was taking up claims and I wanted one, if I could get it.

Q. Where was Mr. Booth when you spoke to him?

A. He was in Eugene.

Q. Were you in Eugene at the time you talked to him?

196 A. I do not remember, if he was living there then or not.
I cannot say.

Q. How long before you started to take up a claim that you talked to him about it?

A. I do not know, we talked about it a good many times.

Q. Did you know Mr. Brumbaugh?

A. Not until then.

Q. How did Mr. Brumbaugh happen to show you the claim, do you know?

A. I do not know that.

Q. You do not know who instructed him to show you the claim?

A. No.

Q. You went right along and looked at the claim that he happened to show you?

A. Yes.

Q. Now, who was in the party that went to Roseburg to file?

A. Mr. Dunbar, my sister, Miss La Raut, and myself.

Q. At these conversations or any of them that you had with Mr. Booth what statement did he make to you with regard to your taking a timber claim,—what did he say that he would do?

A. He said if I wanted to take up a claim there was a chance for me to get a timber claim in there and that he would advance me all the money I wanted to do it, and of course, when the claim was sold, I could pay him back the money.

197 Q. Who attended to details in getting that claim ready for proof if you know?

A. Attended to the details?

Q. Yes, getting the notice published?

A. Mr. Booth, I depended on him for everything.

Q. Did you see him after you went to the claim?

A. I do not know.

Q. Did you notify him that you had filed.

A. I do not remember that I did.

Q. How do you suppose he found out. If you did not tell him?

A. I do not know that.

Q. Mr. Harry Dunbar filed at the same time did he not?

A. No.

Q. Did not he?

A. I do not think he did.

Q. Did not Mr. Dunbar, you and your sister go down to Roseburg?

A. Yes, he went with us, but he did not file.

Q. He went along?

A. Yes.

Q. He was bookkeeper for the company?

A. He was working for the Booth-Kelly Company.

Q. Did Mr. Booth say anything about sending him with you?

A. He didn't say. He went with us anyhow.

Q. Now, when you went to the land, Mr. Dunbar went along too?

A. Yes.

198 Q. And Mr. Brumbaugh was an employe of the company?

A. Yes.

Q. When you went to make proof he went along?

A. I do not remember.

Q. And Mr. Dunbar?

A. I do not remember whether Mr. Dunbar was there or not.

Q. Do you remember Mr. Brumbaugh being there?

A. I do not remember.

Q. You do not recall that they were there?

A. No.

Q. Now who furnished, or who gave you the money to pay for the land?

A. Mr. Booth furnished it I suppose.

Q. How did you get it into your possession when you got down there?

A. I do not know whether I had it in my possession or not. I do not know whether it was handed to me when I went to Roseburg, or whether some one else sent it to me, or handed it to me.

Q. Do not recollect anything about it?

A. No.

Q. You do not recall Mr. Dunbar being there.

A. He might have been there.

Q. Do you know whether he was one of your witnesses?

A. Yes, he was one of my witnesses.

Q. Mr. Dunbar.

A. Yes.

199 Q. And was not Mr. Brumbaugh?

A. I do not remember.

Q. Do you remember whether you had more than one witness or not?

A. I remember Mr. Dunbar.

Q. Well, who paid your expenses down there and back?

A. Mr. Booth, I suppose, he furnished all the money.

Q. How did you get the money?

A. Perhaps he gave it to Harry Dunbar.

Q. Do you recall who bought your ticket when you took the train?

A. No.

Q. Where did you take the train.

A. I do not remember, whether I took the train from Eugene or from Saginaw.

Q. And did you have to stay all night at Roseburg?

A. Yes,—or did we.

Q. Who bought your ticket out of Roseburg?

A. I suppose Mr. Dunbar did.

Q. At any rate, some one was attending to all those matters of details?

A. The money was all furnished for all those things by Mr. Booth.

Q. By Mr. Booth?

A. Yes.

Q. Mr. Robert Booth?

A. Yes.

200 Q. Do you remember whether you stopped at the hotel in Roseburg or not?

A. Yes, sir, I stopped at the hotel.

Q. What hotel?

A. The McClelland House.

Q. Did Mr. Dunbar pay your hotel bill?

A. I do not remember that.

Q. You do not have any recollection of paying it yourself?

A. I did not have any reason for doing it myself.

Q. How long after you got back from Roseburg was it that you made a deed conveying this land?

A. I do not remember that.

Q. Who did you convey the land to?

A. I do not recollect.

Q. Who did you make the deed to?

A. I do not recollect whether it was Mr. Booth or the company.

Q. Did you ever get a patent to your land?

A. Yes,—I did not personally, no.

Q. Who did?

A. I do not know, I suppose there was a patent issued.

Q. Do you know anything about it,—who got it, or anything about that?

A. No.

Q. You never got it?

A. No.

Q. Do you know who did?

A. No.

Q. Did you have any conversation with John Kelly in connection with the matter?

201 A. No.

Q. Now about how long was it after you made proof was it that you deeded the land to Mr. Booth or to the company?

A. I do not know that.

Q. Did he pay you the hundred dollars about that time?

A. I do not remember when he paid me the hundred dollars.

Q. It was somewhere in relation to that time?

A. I do not know.

Q. How did he pay the hundred dollars?

A. I do not remember that either.

Q. By check?

A. I do not remember whether it was a check or money.

Q. Did he give it to you personally?

A. I do not know whether it was handed to me personally, or whether it was sent to me.

Q. At any rate, it came from Mr. Booth, as you so understood it?

A. Yes.

Q. How long was it after that that Mr. Booth gave that deed back to you?

A. I do not remember.

Q. About how long?

A. I do not know,—I have no idea.

Q. Do you recall that it was somewhere in relation to the time of the land fraud agitation?

A. I do not recall.

Q. This deed was delivered to you somewhere in relation
202 to that episode?

A. I do not remember?

Q. Was it not?

A. I do not remember.

Q. What explanation did Mr. Booth make to you when he came and handed you back that deed?

A. I do not know,—I do not remember.

Q. Did he make any?

A. I do not remember whether he did or not.

Q. Did he hand it to you personally?

A. I do not remember.

Q. You do not know how you got that deed?

A. No.

Q. What did you do with it when you got it?

A. I do not know what I did with it.

Q. Did you destroy it?

A. No.

Q. You do not know whether you destroyed it or not?

A. No, I do not.

Q. Have you ever looked for it since?

A. I think it was destroyed. I do not know whether it was destroyed, I would not say,—I do not remember.

Q. You intended to destroy it, did not you?

A. I do not know whether I did or not, I do not know why I would destroy it.

Q. Why was it given back to you?

A. I do not know.

Q. What did you say?

A. I do not know. I depended for everything upon Mr.
203 Booth.

Q. When he came and handed it back to you, you took it without any question?

A. I do not know whether he handed it to me or not.

Q. How did you happen to execute another deed in 1907?

A. The same as the first, one for security.

Q. Security for what?

A. Security for money.

Q. What money was it security for?

A. The amount paid for this land, this timber claim.

Q. Security for the timber claim? The timber claim was yours?

A. Sure, but Mr. Booth furnished all the money.

Q. How much money did he furnish?

A. I do not know what the expenses were for all these different things, I have not any idea.

Q. How did you happen to make a deed to the Booth-Kelly Lumber Company for money that Mr. Booth furnished?

A. I do not know anything about that, I trusted to Mr. Booth for that.

Q. Did you ever pay any taxes on that land?

A. Not personally. Those taxes were all paid.

Q. How did you know they were.

A. I trusted to Mr. Booth.

Q. You trusted to Mr. Booth?

A. I did.

Q. Do you know whether he paid them in his name, or in yours?

A. I do not know that.

204 Q. How much money had you had when you gave this deed for security?

A. I do not know whether I had any money.

Q. What was it to secure? If you had no money?

A. He had furnished all the money, he had to have something for security.

Q. How much money had he furnished for which you gave him the deed as security?

A. I do not know.

Q. You gave the deed without knowing how much he claimed that he had furnished?

A. Certainly.

Q. You never asked him how much he had furnished?

A. I never asked him anything about it.

Q. Never asked him to let you have any more money?

A. No.

Q. What did you want a timber claim for anyway?

A. Why to make money out of it.

Q. You have not made very much money out of this one have you?

A. Not yet, but I hope to.

Q. How much is it worth?

A. I do not know.

Q. Did you inquire what it was worth, or ever try to sell it to anybody, and have you no idea what it is worth?

A. I have not the slightest idea.

205 Q. You were not very anxious about the value of it?

A. Certainly I was.

Q. You were not interested enough to ask?

A. I depended on him.

Q. I know you depended on him, but you never asked what it was worth?

A. No.

Q. You never asked if your claim was worth one thousand dollars or ten thousand dollars?

A. No.

Q. Yet you took up a timber claim because you wanted to make money out of it.

A. Sure.

Q. Did Mr. Booth ever pay you any more money than that one hundred dollars?

A. Yes.

Q. When?

A. I do not know when it was, just when.

Q. About when?

A. I do not just remember when he paid it.

Q. How much was it?

A. Twenty-five dollars.

Q. Twenty-five dollars?

A. Yes.

Q. What did he pay it for?

A. Because I wanted it.

Q. How did it happen that you wanted just that sum of money?

206 A. I do not know that—I do not know whether there was any certain sum of money.

Q. You wanted twenty-five dollars.

A. I did not say that I wanted Twenty-five dollars.

Q. That is what he gave you?

A. I asked for money and he gave me twenty-five dollars.

Q. Did you tell Mr. Booth how much you wanted?

A. No.

Q. How did he happen to give it to you?

A. I just told you.

Q. You asked him for money and he loaned you twenty-five dollars?

A. I asked for money and he gave it to me.

Q. Nothing was said about this timber claim?

A. No.

Q. You have never been up to that timber claim since that?

A. No.

Q. Never exercised any control of any character over it. Since that at any time?

A. No.

Q. Do you know where it was that you made out that first deed?

A. No.

Q. Or who was present?

A. No.

Q. Do you know where you were when you made out the second one?

A. No, I do not remember that.

207 Q. Do you remember whether your sister was present when you made it out?

A. No, I do not.

Q. Where does Mr. Lewis work?

A. For the Booth-Kelly Company.

Q. How long has he been working for the Booth-Kelly Company?

A. I do not know.

Q. Do you remember whether your sister and you were together at the time you made out the second deed?

A. No, I do not remember.

Q. Do you recall where it was that you made out that deed?

A. No.

Q. You are living at Eugene now?

A. I live at Eugene.

Q. You were living there at the time you made out that deed were you not?

A. I do not remember.

Q. Do not you have any recollection of making that second deed at all?

A. No, I do not remember.

Q. Do you know that you ever made a second deed?

A. Well, I think I did.

Q. What did you say?

A. I think I did.

Q. In what capacity does your husband work for the Booth-Kelly Company?

A. Sales manager.

208 Q. Do you mean to say now Mrs. Lewis, that you have no more definite recollection about this matter? That you do not remember when you made this deed?

A. No. I do not.

Q. You do not remember how much Mr. Booth had loaned you or advanced you?

A. No.

Q. You have never made any effort to sell the claim?

A. No.

Q. Do not you know that that claim is worth between eight and ten thousand dollars?

A. No.

Q. Have not the least idea?

A. No.

Q. You never have inquired about it? Or taken the faintest interest in it?

A. I never have, because when that timber is sold, or when their timber is sold, they are to give me so much for it.

Q. When did they tell you that?

A. I do not remember.

Q. Who told you that?

A. Mr. Booth.

Q. How long ago?

A. I do not remember.

Q. Was not that about two years ago?

A. I do not remember.

209 Q. Is it not about two years ago that he told you that about the time he was tried down here and some question came up about this very claim?

A. I do not remember that at all.

Q. It was a long time after you took the claim up that he told you that?

A. I do not remember.

Q. But you have not taken any further interest in property worth eight or ten thousand dollars belonging to you?

A. No, because when it is sold I will get what it is worth.

Q. When prior to this day did you ever make a claim that you had an equitable lien or claim upon that land?

A. I do not just understand.

Q. Is not today, the first time you have ever made such a claim?

A. I do not understand.

Q. Is not today the first time that you ever made a claim that you gave Mr. Booth, or either of those gentlemen that deed, as a mortgage?

A. No, sir.

Q. When did you ever make that claim?

A. When the deed was made, that it was for security.

Q. Who did you ever tell that to?

A. To Mr. Booth, of course

Q. Did you ever tell anybody else that?

A. No.

Q. What interest are you paying in on that money that he advanced you?

A. None.

Q. No interest?

210 A. No, sir. He is doing that to help me.

Q. Did he pay the taxes to help you?

A. Sure.

Q. What does he get out of it? What would he get out of it?

A. I do not know, whatever the expenses are is what he gets.

Q. He just simply gets his money back?

A. I suppose so.

Q. You suppose so?

A. Yes.

Q. What other property have you besides this timber claim?

A. None.

Q. What other property did you have at the time you took up the timber claim?

A. None.

Q. What property have you had between the time you took up the timber claim and the present time?

A. None.

Q. Were you working for the Booth-Kelly Company at Saginaw at the time you took the claim?

A. Yes sir.

Q. What other property has your sister?

A. None.

Q. What property had your sister at the time she took her claim or since that time, or now?

A. None.

Q. None at all except the timber claim?

211 A. That is all.

Counsel for the government now offers in evidence a deed from Ethel M. Lewis and husband to the Booth-Kelly Lumber Company, bearing date of September 6th, 1907, and the same is received and filed marked Government's Exhibit "H," and is in words and figures as follows, to-wit:

Warranty Deed.

This indenture witnesseth: That Ethel M. Lewis, formerly Ethel M. La Raut, and L. L. Lewis, her husband, for and in consideration of the sum of Ten (\$10) Dollars to them paid do hereby bargain, sell and convey unto the Booth-Kelly Lumber Company, a corporation, the following described premises, to-wit:

Lots Nine (9), Ten (10), Fifteen (15), and Sixteen (16), being the southeast quarter (S. E. $\frac{1}{4}$) of the Section Twenty-eight (28), Township Twenty-one (21), South of Range Two (2), West of the Willamette Meridian, situated in Lane County, Oregon, and containing One Hundred Sixty-two and eight-two hundredths (162.82) acres more or less.

To have and to hold the said premises, with their appurtenances, unto the said The Booth-Kelly Lumber Company, its successors and assigns forever. And the said Ethel M. Lewis and L. L. Lewis, do hereby covenant to and with the said The Booth-Kelly Lumber Company, its successors and assigns, that they are to owners in fee simple of said premises, and that they are free from all incumbrances, and that they will warrant and defend the same
212 from all lawful claims whatsoever.

In witness whereof, We have hereunto set our hands and seals this 6th day of September, A. D., 1907.

[SEAL.]

ETHEL M. LEWIS.

[SEAL.]

L. L. LEWIS.

Done in the presence of:

J. A. GRIFFIN.

H. A. DUNBAR.

STATE OF OREGON,

County of Lane, ss:

On this the 6th day of September, A. D., 1907, personally came before — a notary public in and for said county the within named Ethel M. Lewis and L. L. Lewis her husband to me personally known to be the identical persons described in, and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 6th day of September, A. D., 1907.

[NOTARIAL SEAL.]

H. A. DUNBAR,
Notary Public for Oregon.

Filed for record Sept. 7, 1907, at Eight A. M.

E. U. LEE,
County Clerk,
By — — —, *Deputy.*

STATE OF OREGON,

County of Lane, ss:

I, E. U. Lee, County Clerk, and Ex-Officio Recorder of conveyances in and for Lane County, State of Oregon, do hereby
 213 certify that I have compared the foregoing copy of warranty deed with the original, and that the same is a correct transcript therefrom and of the whole of said original warranty deed as the same appears of record at page 290, Book 71, Lane County Deed Records, now in my official care and custody.

In witness whereof I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[SEAL.]

E. U. LEE,

*County Clerk and ex-Officio Recorder of Conveyances
 in and for Lane County, Oregon.*

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. Now, you say that Mr. Robert Booth is your brother-in-law?

A. Yes, sir.

Q. He married a sister of yours?

A. Yes sir.

Q. And he has been accustomed to help you and your sister and other members of the family along, is that correct?

A. Yes, sir.

Q. And you have depended on him more or less for advice and assistance?

A. Always looked to him for advice.

Q. And at all times, you had every confidence in his advice?

214 A. Every confidence,—he helped me in many ways.

Q. So far as the advancing of this money is concerned you trusted to him to keep account of it and to make a proper settlement for it?

A. Yes, sir.

Q. Now, you say that you broached the subject to Mr. Booth about wanting to take a timber claim yourself?

A. I think I did.

Q. And did you say anything to him about wanting to get a claim for any other members of the family?

A. Yes.

Q. What did you say to him about it?

A. I wanted to know if my sister Lucy could get one, and also in regard to Stephen and Alice La Raut?

Q. What did you say to him about Stephen and Alice La Raut?

A. That they would like to take up a claim. He said he would do the same by them as he had with me.

Q. Did you say anything to him in any of those conversations about yourself and Lucy wanting to become self-supporting and to get the benefit of a timber claim?

A. Yes.

- Q. And what was it you say he said about helping you advancing the money to enable you to take a claim and so on?
- 215 A. He said he would advance all the money that I needed.
- Q. And help you in that way?
- A. Help me in that way to get a claim, and when it was sold or milled he would get his money back and I would get what it was worth.
- Q. Now, Mr. Brumbaugh and Mr. Dunbar took you up there as you understood that they were doing that at Mr. Booth's suggestion?
- A. Yes, sir.
- Q. For your benefit?
- A. For my benefit.
- Q. Now, did you at the time you filed on this claim do so for the purpose of making what you could out of it for yourself and for your own benefit?
- A. Yes sir.
- Q. Did you take the claim for the purpose of selling it when you saw fit, for what you could get out of it?
- A. Yes.
- Q. You took the claim that you had a right to take and sell it for what you saw fit?
- A. Yes, that is the idea I had.
- Q. Had you prior to filing on this claim, promised anybody to sell it to them, or to deed it to them?
- A. No, sir.
- Q. Had you made any agreement of any kind to sell it to any body,—Mr. Booth or any body else?
- A. No agreement to sell it to any body.
- Q. Had you made any contract? Or signed any paper whatever? Or made any agreement whatever? Before you made application to purchase the land or before you proved up on it to sell it to anybody else?
- 216 A. No, sir.
- Q. Or any interest in it?
- A. No, sir.
- Q. Had you made any agreement to sell any interest in it?
- A. No, sir.
- Q. Or the timber on it?
- A. No, sir.
- Q. Was any other person, firm, or corporation interested in any way with you in the taking of this claim?
- A. No, sir.
- Q. Now, what is the facts as to whether or not this hundred dollars was paid before or after the first deed was made, do you recall about that?
- A. I do not recall.
- Q. Did the payment of the hundred dollars and the making of the first deed have any relation to each other,—that is was the deed made in consideration of the hundred dollars or anything of that kind?
- A. No, sir.
- Q. You say the purpose of this deed was what?

A. Security.

Q. You gave Mr. Booth security for the money that he was advancing to you in the matter?

A. Yes, sir.

Q. And the second deed was made in the same way was it?

A. Sure.

217 Q. For the same purpose?

A. Yes.

Q. And do you still claim to own this land subject to the mortgage to the Booth-Kelly Company?

A. Certainly.

Q. And you have had the right at all times to sell it, if you wanted to?

A. Certainly.

Q. And still claim that right?

A. I still claim that right.

Q. How did Mr. Booth come to pay you the hundred dollars that you just explained?

A. Well, he gave me money many times when I needed it. When I asked him for money, he would have advanced it to me knowing that I needed money. I do not recall.

Q. And the payment of the twenty-five dollars? Was in the same way was it?

A. The same way.

Q. You were depending on him?

A. Yes. That was not all the money that he has ever given me.

Q. You were depending on him to keep account of the money?

A. Certainly.

Q. And when you finally settled up to adjust the matter between you?

A. Certainly.

Q. Has there ever been any settlement as to the balance?

A. No, sir.

218 Q. Or anything of that kind?

A. No, sir.

Q. State whether you have been advising with Mr. Booth the last year or two about selling your claim, or in regard to your land,—have you had any talk with him about it?

A. About what?

Q. In reference to selling your claim,—about what the prospects was for selling it,—have you talked with Mr. Booth about that matter?

A. No.

Q. You have just depended on him to look after it, and do the best he could for you in the matter, is that the idea?

A. That is the idea.

Q. Now it has been Mr. Booth's method, or purpose, has it not, to give members of the family employment and help them along about giving them employment in the company wherever he could?

A. Yes sir.

Q. And he has been very kind to all of them?

A. Yes, to all of them.

Q. And you have every confidence in him to do what was right by you in relation to your claim?

A. Yes, I would go to him for anything.

Q. How long had you been working for the company there in the store when you took this claim?

A. When did I take it please?

Q. 1902.

A. One year.

Q. About a year?

219 A. About a year, yes.

Q. How long has your brother Stephen A. La Raut been working there?

A. I do not know, I do not remember when he went there?

Q. Was he there when you went there?

A. Yes, but I do not recall how long before.

Q. How long did you continue after that?

A. I do not remember, but I was there two or three years, I do not remember just when I left there, it has been a good while ago since I came away.

Q. How long did he continue after that?

A. I do not know, he was there when I left.

Q. Did not you continue to work for the company up to about the time you were married?

A. Yes, about a year before.

Q. When were you married?

A. In 1905.

Q. Then you must have continued to work up there until about 1904?

A. Somewhere about that I never figured it up.

Q. Now, when you first broached the subject to Mr. Booth about taking the timber claim for yourself and for other members of the family — your sister Lucy, and Stephen and his wife, did not he tell you that he could not make any bargain if he wanted to buy the land?

A. Sure.

Q. That it would be illegal to do that.

A. Sure.

Q. He explained that all to you?

220 A. Yes.

Q. He told you that he could not make any contract to purchase the land before you proved up on it?

A. Yes.

Q. But, in order to help you along he would advance the money to enable you to take the claim up?

A. Yes, so we could take advantage of our rights.

Q. Do you know Mrs. Applestone that was on the stand awhile ago?

A. Yes, sir.

Q. How long have you known her?

A. Always, I guess.

Q. You have known her from childhood?

A. Yes, from childhood, when my brother married her mother.

Q. She is not related to you in any way?

A. No.

Q. No blood relation?

A. No.

Q. Do you remember her visiting Stephen about the time these claims were taken?

A. Well, of course that was her home—that is she was there part of the time and away part of the time,—of course, I do not remember.

Q. Do you recall whether or not she was there about the time you went up to look at the land and file on the claim?

A. I do not recall no.

Q. You do not recall about that?

A. No.

221 Q. Did you at any time ever hear her mother or Stephen talking to her about these claims, or about taking a claim?

A. No, I never did.

Q. Did you ever talk to her about it yourself?

A. No.

Q. If her mother or Stephen had talked to her about them, or about the arrangement would you have been apt to have heard it do you suppose?

A. I do not know whether I would or not.

Q. Were you about the house much yourself?

A. No, only for my meals and to sleep.

Q. What was she doing there—just visiting her family?

A. Well, they were her parents, she was there when she was not at any place else.

Redirect examination.

(Questions by Mr. McCourt:)

Q. Did you get a copy of or rather a form or proof of timber entries, before you went down to prove up from Mr. Booth, or the Booth-Kelly Company written out in questions and answers?

A. I do not remember.

Q. You do not remember that?

A. No.

Q. How much were you getting down there at the store?

A. I got an advance in wages at different times.

Q. Along in 1902 say?

222 A. I do not remember, somewhere in the neighborhood of twenty-five or thirty dollars.

Q. That was in addition to your compensation as Post-Mistress?

A. No.

Q. That included your post-mistress salary?

A. Yes.

Q. You boarded at home?

A. Yes.

Q. This hundred dollars that you got there, what did you do with it?

A. I do not know what I did with it, I used it.

Q. You did not put it in the bank?

A. No.

Q. How was it paid to you?

A. In a check, or how, I do not remember.

Q. Do not remember that at all?

A. No.

Q. You say Mr. Booth has given you money at other times besides this hundred dollars?

A. Yes a good many times.

Q. How much?

A. I do not remember, he has given me different sums at different times.

Q. They were mere gifts.

A. Mere gifts.

Q. They were not secured by the timber claim?

A. No.

Q. They were considered gifts without any timber claims to secure them with?

A. Sure, he has given me money because he has helped me a good many times.

223 Q. He simply gave you the hundred twenty-five dollars?

A. Sure.

Q. Was it secured by the timber claim?

A. I gave him a deed for security of the timber claim.

Q. You secured him with a deed?

A. Yes.

Q. What did he give you to show that it was for security?

A. Nothing that I know of.

Q. There was not much use for securing him, if he never gave you anything to show for it?

A. I think so. He has advanced money and I thought I should give him that deed as security.

Q. What had he advanced?

A. The filing fees.

Q. How much was that?

A. I do not know. I do not know as I ever knew.

Q. How much do you think?

A. I do not know.

Q. Have you any idea?

A. No, I have no idea.

Q. Do you think it was as much as one hundred dollars?

A. I do not know. I do not have any idea.

Q. You say you felt as though you could sell that claim to anybody?

A. I could sell it to anybody.

224 Q. You never tried to?

A. No, I depended on him.

Q. You never asked him to sell it for you?

A. No, but he intended to do so as quick as he could.

Q. He never told you how much it was worth?

A. No.

Q. Or how much you could get for it?

A. No.

Q. The Booth-Kelly Company was buying timber was it not?

A. I do not know anything about that.

Q. How did you expect to sell it while the Booth-Kelly Company had it?

A. If they sold theirs, they were to put mine in.

Q. How did they happen to take a deed to it six or seven years before? Couldn't they have done that without the deed?

A. I do not know.

Q. Wouldn't you feel safer with the title to the property in your own name instead of the Booth-Kelly Company?

A. No.

Q. It was just as secure with the Booth-Kelly Company?

A. Just as secure.

Q. Do you remember that Mrs. La Raut and Mr. Stephen La-Raut each got one hundred dollars about the same time that you did?

A. No, I do not know anything about that.

225 Q. Do not you know that they got one hundred dollars each?

A. No.

Q. Do not you know that they got twenty-five dollars, each of them, about the same time that you got yours?

A. No, I do not.

Q. You do not know what arrangement they had about that?

A. No, I do not.

Q. What did Mr. Booth have for security during that year and a half when he didn't have any deed at all?

A. I do not remember when he got his deed.

Q. You remember he gave it back to you,—he returned that first deed?

A. Yes.

Q. Then it was about a year and a half afterwards before you gave him the next deed?

A. I do not remember.

Q. You know there was quite a little time that he didn't have a deed?

A. No, I do not know that.

Q. There was some time?

A. I do not know.

Q. What do you say?

A. I do not know when the second deed was made, I do not remember.

Q. Do you remember the circumstances of the first deed being returned to you?

226 A. No. I do not just recall it.

Q. You know that you did make two deeds do you not?

A. Yes.

Q Do you know that the first deed was never put on record?

A. No.

Q. You do not know that?

A. No.

Recross examination.

(Questions by Mr. A. H. TANNER:)

Q. You say that this security furnished by this second deed as well as the first deed was for the money that Mr. Booth or the company should advance to enable you to get a claim and pay the expenses and pay for the land and any advances they might make to you afterwards?

A. Yes sir.

Q. And that is how the matter stands at this date?

A. That is the way the matter stands today the same as it was then.

Q. Now, do you recall when this first deed was surrendered up to you?

A. No.

Q. Whether the second deed was taken at the same time?

A. I do not remember.

Q. It might have been done at the same time?

A. It might have been done at the same time as far as I remember.

227 Q. Did the taking of this second deed have anything to do with the trial of Mr. Booth here in the action against him,—was there any connection of any kind between them?

A. No.

Q. It had nothing to do with that?

A. No, nothing at all.

Further direct examination.

(Questions by Mr. JOHN McCOURT.)

Q. Do not you recall about that time that there was a subpoena out for you people,—you and your sister, and you slipped away secretly to avoid the officers?

A. No.

Q. Do not you remember going out from Saginaw to Cottage Grove and taking the train?

A. No.

Q. Did you know there was a subpoena out for you? And that you could not be found?

A. No sir.

Further cross-examination.

(Questions by Mr. A. H. TANNER.)

Q. Did you evade a subpoena at any time?

A. I never have.

Q. In this case, or any case?

A. Never have.

(Witness excused.)

Thereupon the taking of testimony herein is adjourned until December 20th, 1910, at the hour of two o'clock P. M. to be resumed at the Grand Jury Room of the Circuit Court of the United States for the District of Oregon, in the City of Portland, County of Multnomah, State of Oregon.

GEO. A. BRODIE,
U. S. Examiner.

FRED C. RABB is called as a witness for the Government and being first duly sworn testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT.)

Q. What official position do you occupy?

A. Special Agent of the General Land Office.

Q. For how long have you been such?

A. The last three years.

Q. As such agent, are you familiar with the records of the Roseburg Land Office?

A. Yes, sir.

Q. Have you examined the records of contest and hearings of the Roseburg Land Office for the purpose of ascertaining whether or not there has been any contest, protest, adverse report, or other proceedings affecting the entries in controversy in this case?

A. I have, yes, sir.

Q. What do you find upon such examination?

A. I find no action had been taken or suspension or other adverse report made against the entries during the period from January, 1901 until January 1905, after the issuance of patents.

Q. Do you find any such proceedings prior to the issuance of patent?

A. No, sir.

229 Q. And subsequent to the filing?

A. No, sir, there was no proceedings of record at all.

No cross-examination.

(Witness excused.)

PORTLAND, December 20, 1910—Two o'clock P. M.

At this time, appear the parties as before the plaintiff appearing by Mr. John McCourt, District Attorney, and the Defendants appearing by Mr. A. H. Tanner and A. C. Woodcock, their attorneys, and thereupon the following proceedings are had to-wit:

GEORGE W. RIDDLE, is called as a witness for the government and being first duly sworn, testified as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. What official position do you hold Mr. Riddle?

A. Receiver in the United States Land Office at Roseburg, Oregon.

Q. As such receiver, you are in control of the records and books of the land office there, together with the register?

A. Yes, sir.

Q. I show you a book entitled "Register of Entries" and having on the back thereof the designation, "Timber" and I will ask you if that is a record of your office?

A. Yes.

230 Q. And it covers the year 1902? Have you examined it?

A. Yes, sir, it is.

Q. I will ask you to examine the entries shown by that book under the timber and stone law and which were made upon the 7th day of February, 1902, and state what entries were made there at that time on that date as shown by this record?

A. Beginning here there is "Stephen A. La Raut, Mrs. Alice La Raut," those two seem to be the only ones that day.

Q. What number do they carry?

A. 2,026 for Stephen La Raut, and 2,027 for Alice La Raut.

Q. On what date does this record show that proof was made upon those two entries?

A. May the 7th, 1902. In both entries proof was made on the same day.

It is understood and agreed that these are the lands, a portion of which are in controversy in this case.

Q. Will you examine this same record for the 17th day of February, 1902, and state what entries were made on that date.

A. Lucy La Raut, Ethel M. La Raut, Dan H. Brumbaugh, and Harry A. Dunbar.

Q. Those four were made on the same day?

A. Yes.

Q. You notice by this record, when proof was made upon those four entries?

A. Proof was made on all four of those entries at the same
231 time; May 8th, 1902.

Q. Will you state whether or not all of those entries appear consecutively?

A. Yes, sir, they do.

Q. You may give the numbers.

A. 2,245 for Lucy La Raut, and 2,246 for Ethel M. La Raut, and 2,247 for Daniel H. Brumbaugh, 2,248 for Harry A. Dunbar.

Counsel for defendants object to any evidence relative to Brumbaugh and Dunbar as incompetent, and immaterial.

Mr. McCourt: The evidence in the case will connect those entries with the entries in controversy later.

Q. I wish you would examine this book as to the entries made on the 14th day of February, 1902, and upon which proof was made upon the same day.

Counsel for defendant objects to the question as incompetent.

A. Thomas Roach and Edward Jordan?

Q. What are the numbers of those entries?

A. Thomas Roach 2,038, and for Edward Jordan, 2,039.

Q. When was proof made upon those claims? As shown by this record?

A. May 7th, 1902.

Q. In both entries was not proof made the same day?

A. The same day, yes.

Mr. McCourt: It will not be necessary to put the record in.

232 Mr. TANNER: No, I do not think so.

Cross-examination.

(Questions by Mr. A. H. TANNER.)

Q. These entries from which you have testified, were not made by you were they Mr. Riddle?

A. No, sir.

Q. You simply testify by what is shown by the records?

A. That is all.

LOUIS SHARP, is called as a witness for the government; being first duly sworn, testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT.)

Q. What official position do you occupy Mr. Sharp?

A. Chief of the First Field Division of the General Land Office.

Q. Where are you located?

A. At Portland.

Q. Do you as such chief of Field Division have control of such action as is taken or has been taken in relation to the entries in this case?

A. Yes, sir.

Q. As it relates to the prosecution thereof?

A. Yes, sir.

Q. Have you taken any action towards ascertaining whether or not there is any records in the general land office of any contest, protest, or adverse or other proceedings of any kind relating to the title to these lands after entries were made and prior to patent?

233 A. On October 4th, 1910, I addressed a letter to the Commissioner of the General Land Office, and requested all of the records and papers relating to any protest, contest or hearing filed involving these claims before patent was issued.

Q. What action did the commissioner take on your request?

A. On October 12, 1910, I was advised by telegram that no record of protest, contest, or hearing before patent could be found and they further asked me to wire them the office decision if possible. I made an investigation as to whether there had been any office decisions or any proceedings on record in the local office at Roseburg, and found that there were none.

No Cross examination.

(Witness excused.)

Counsel for the government offers in evidence a certified copy of the deed from Edward A. Jordan and Mary A. Jordan, his wife to the Booth-Kelly Lumber Company purporting to transfer to said company the land involved in the Jordan entry in this case, bearing date of the 22nd day of July, 1902, and showing that it was recorded on September 6, 1907, and the same is received and filed marked Government's Exhibit "I," without objection, and is in words and figures as follows, to-wit:

Warranty Deed.

This indenture witnesseth, That Edward Jordan and Mary
234 A. Jordan his wife, for and in consideration of the sum of
\$500.00 to them paid do hereby bargain, sell and convey unto
The Booth-Kelly Lumber Company, a corporation, the following
described premises, to-wit:

Lots Seven (7), Eight (8), Nine (9), and Ten (10), Section Two
(2), Township twenty-two (22), South of Range Two (2), West,
containing One Hundred and Sixty (160) acres.

To have and to hold the said premises with their appurtenances
unto the said The Booth-Kelly Lumber Company, a corporation, its
successors and assigns forever, and the said Edward Jordan and Mary
A. Jordan his wife, do hereby covenant to and with the said The
Booth-Kelly Lumber Company, a corporation, its successors and as-
signs, that they are the owners in fee simple of said premises, and
they are free from all incumbrances, and that they will warranty
and defend the same from all lawful claims whatsoever.

In witness whereof, we have hereunto set our hands and seals this
22nd day of July, A. D., 1902.

[SEAL.]

[SEAL.]

EDWARD JORDAN.
MARY A. JORDAN.

Done in presence of:

H. A. DUNBAR,

J. A. JENNINGS,

Witness for Mary A. Jordan.

STATE OF OREGON,
County of Lane, ss:

235 On this the 22nd day of July, A. D. 1902, personally came before me, a Notary Public in and for said County the within named Edward Jordan, and to me personally known to be the identical person described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 22nd day of July, 1902.

[NOTARIAL SEAL.]

H. A. DUNBAR,

Notary Public for the State of Oregon.

STATE OF OREGON,
County of Josephine, ss:

This certifies, that on the 28th day of July, A. D., 1902, before me the undersigned a Notary Public in and for said county and State, personally appeared the within named Mary A. Jordan who is known to me to be the identical person described in and who executed the within instrument and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony, I have hereunto set my hand and seal the day and year last above written.

[NOTARIAL SEAL.]

J. A. JENNINGS,

Notary Public.

Filed for Record Sept. 6, 1907, at 11:05 A. M.

E. U. LEE, *County Clerk,*

By C. N. GRISWOLD, *Deputy.*

236 STATE OF OREGON,
County of Lane, ss:

I, E. U. Lee, County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, State of Oregon do hereby certify that I have compared the foregoing copy of warranty deed with the original, and that the same is a correct transcript therefrom, and of the whole of said original, Warranty Deed, as the same appears of record at page 34, Book No. 76, Lane County, Deed Records, now in my official care and custody.

In witness whereof, I have hereunto set my hand and affixed the seal of the county court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[SEAL.]

E. U. LEE,

County Clerk and ex-Officio Recorder of Conveyances

in and for Lane County, Oregon.

Counsel for the government also offers in evidence deed of Stephen A. La Raut and Alice La Raut, his wife, bearing date the 4th day of March, 1907, purporting to convey to the The Booth-Kelly Lumber

Company the land involved in the Stephen A. La Raut timber and stone entry described in the complaint herein and showing the record date as the 4th day of March, 1907, and the same is received and filed marked Government's Exhibit "J" without objection, and is in words and figures *and* follows, to-wit:

Warranty Deed.

This indenture, witnesseth, That Stephen A. La Raut, and Alice La Raut, his wife, for and in consideration of the sum of One
237 Hundred Dollars (\$100.00), to them paid do hereby bargain, sell and convey unto The Booth-Kelly Lumber Com-

and is in words and figures as follows, to-wit:

The Northeast quarter (N. E. $\frac{1}{4}$), of Section Twenty-six (26), Township Twenty-one (21), South of Range Three (3), West of the Willamette Meridian, situate in Lane County Oregon, and containing one hundred and sixty (160) acres.

To have and to hold the said premises with their appurtenances, unto the said The Booth-Kelly Lumber Company their successors and assigns, forever. And the said Stephen A. La Raut does hereby covenant to and with the said The Booth-Kelly Lumber Company their successors and assigns, that he is the owner in fee simple of said premises; and that they are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

In witness whereof, we have hereunto set our hands and seals this 4th day of March A. D., 1907.

[SEAL.]

STEPHEN A. LA RAUT,
ALICE LA RAUT,

[SEAL.]

Done in presence of:

H. A. DUNBAR.

L. L. LEWIS,

STATE OF OREGON,

County of Lane, ss:

On this, the 4th day of March, A. D., 1907, personally came before me, a Notary Public in and for said county the within named
238 Stephen A. La Raut and Alice La Raut his wife, to me personally known to be the identical person- described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 4th day of March, 1907,

[NOTARIAL SEAL.]

H. A. DUNBAR,
Notary Public for Oregon.

Filed for Record March 4th, 1907, at 1:30 P. M.

E. U. LEE, *County Clerk,*

By ———, *Deputy.*

STATE OF OREGON,

County of Lane, ss:

I, E. U. Lee, County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Warranty Deed with the original, and that the same is a correct transcript therefrom, and of the whole of said original warranty deed as the same appears of record at Page 456, Book No. 70, Lane County Deed Records, now in my official care and custody.

In witness whereof, I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[NOTARIAL SEAL.]

E. U. LEE,

County Clerk and ex-Officio Recorder of Conveyances

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in and for Lane County, Oregon.

Counsel for the government also offers in evidence the deed of Alice La Raut and Stephen A. La Raut bearing date 4th day of March, 1907, and appearing to have been recorded on the same date purporting to convey to the Booth-Kelly Lumber Company the lands embraced in the Alice La Raut timber and stone entry described in the bill of complaint herein, and the same is received without objection, filed and marked Government's Exhibit "K" and is in words and figures as follows, to-wit:

Warranty Deed.

This indenture witnesseth, That Alice La Raut and Stephen A. La Raut, her husband, for and in consideration of the sum of One Hundred (\$100) Dollars to them paid do hereby bargain, sell and convey unto the The Booth-Kelly Lumber Company the following described premises, to-wit:

The Southeast — (S. E. $\frac{1}{4}$) of Section Twenty-six (26), Township Twenty-one (21), South of Range Three (3), West of Willamette Meridian, situate in Lane County, Oregon, and containing one hundred and sixty (160) acres.

To have and to hold the said premises, with their appurtenances, unto the said The Booth-Kelly Lumber Company their successors and assigns, forever. And the said Alice La Raut does hereby covenant to and with the said The Booth-Kelly Lumber Company their successors and assigns, that she is the owner in fee simple of said premises; and that they are free from all encumbrances and that she will warrant and defend the same from all lawful
240 claims whatsoever.

In witness whereof, we have hereunto set our hands and seals this 4th day of March, A. D., 1907.

[SEAL.]

ALICE LA RAUT.

[SEAL.]

STEPHEN A. LA RAUT.

Done in presence of:

H. A. DUNBAR.

L. L. LEWIS.

STATE OF OREGON,
County of Lane, ss:

On this 4th day of March, A. D., 1907, personally came before me, a Notary Public in and for said county the within named Alice La Raut and Stephen A. La Raut her husband, to me personally known to be the identical person- described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

Witness my hand and seal this 4th day of March, A. D., 1907.

[NOTARIAL SEAL.]

H. A. DUNBAR,
Notary Public for Oregon.

Filed for Record March 4, 1907, at 1:30 P. M.

E. U. LEE, *County Clerk*,
By ———, *Deputy*.

STATE OF OREGON,
County of Lane, ss:

I, E. U. Lee, County Clerk and ex-Officio Recorder of
241 Conveyances in and for Lane County, State of Oregon, do
hereby certify that I have compared the foregoing copy
of Warranty Deed, with the original, and that the same is
a correct transcript therefrom, and of the whole of said original
warranty deed, as the same appears of record at page 456, Book No.
70, Lane County Deed Records now in my official care and custody.

In witness whereof I have hereunto set my hand and affixed the
seal of the County Court in and for Lane County, State of Oregon,
this 6th day of December, 1910.

[SEAL.]

E. U. LEE,
County Clerk and ex-Officio Recorder of Conveyances
in and for Lane County, Oregon.

It is stipulated and agreed by and between the parties hereto that
patents for the lands embraced in timber and stone entries of Ed-
ward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La
Raut and Lucy La Raut, respectively were delivered to Frank E.
Alley, on November 9, 1904, by the officers of the Roseburg Land
Office and that Alley secured the same at the request of John F.
Kelly.

Counsel for the government hereby notifies the defendants The
Booth-Kelly Lumber Company, to produce at the hearing of this
cause before George A. Brodie, all books, records and plats of the
Booth-Kelly Lumber Company, showing the payment of money to
Alice La Raut, Ethel La Raut, Lucy La Raut, Stephen A. La Raut,
and Edward Jordan, or to any person or persons, or *them* either
of them in relation to the acquisition by said company of
242 the lands involved in the several timber and stone entries of
said persons, which are involved in this controversy, or the
advancing, or payment of money by said company to said parties
in connection with the acquisition by said parties of said land, or
any part thereof, from United States, the plaintiff herein.

And also notifies and requires the defendant the The Booth-Kelly Lumber Company to produce upon this hearing, before the said George A. Brodie, all books, records and plats of the Booth-Kelly Lumber Company showing all lands owned and controlled by said Booth-Kelly Lumber Company between *the* Twenty-one and Twenty-two, south of range two and three west of the Willamette Meridian, also all record- of deeds delivered to said company by the persons above named between said dates.

This notice in regular form is at this time delivered to the defendants' attorney by counsel for the government.

EDWARD JORDAN being called as a witness for the government and being first duly sworn testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. Where do you live Mr. Jordan?

A. Edgewood, California.

Q. What is your business?

A. Mill sawyer.

Q. Were you ever employed by the Booth-Kelly Lumber
243 Company in Oregon?

A. Yes, sir, I was.

Q. When.

A. I do not remember the exact date. It has been a good many
years ago.

Q. Was it during the year 1902?

A. I cannot say, it was along about that time.

Q. Do you recall the circumstance of taking up a timber claim in
Lane County, some time in 1902?

A. Yes, sir.

Q. In Section Two, Township 22, South of Range 2 West, of
the Willamette Meridian?

A. Yes, sir.

Q. Were you working for the company at that time and prior
thereto and since said date?

A. Yes, sir.

Q. State the circumstances under which you took up that claim,—
what induced you to do it?

A. Well, I just took it up for Mr. Kelly,—John F. Kelly.

Q. How did he communicate with you?

A. Over the phone.

Q. Where were you at the time?

A. Coburg, Oregon.

Q. What were you doing at Coburg?

A. I was looking after the yards there for the company.

Q. What did Mr. Kelly say to you over the phone?

A. He asked me if I wanted to take up a timber claim for him,
and I told him yes.

244 Q. What did he say further about it?

A. Well, he told me what he would give me.

- Q. What did he say he would give you?
A. That he would give me one hundred dollars.
Q. What else was he to do besides paying that amount?
A. I do not understand.
Q. What else was he to do, besides pay you the hundred dollars?
A. He was to pay for the land and to pay my expenses.
Q. Did he tell you that over the phone?
A. No, sir.
Q. Just said he would give you a hundred dollars?
A. He did not say he would give me one hundred dollars over the phone—not until I went over and talked with him.
Q. Then what did you do?
A. I went to Cottage Grove from Eugene, and found out where this timber claim is and filed on it.
Q. Who went with you out there?
A. Mr. Roche, and Mr. Brumbaugh, Mr. Brumbaugh was out there when I got out there.
Q. Where did Mr. Roche join you?
A. In Eugene.
Q. Where did you meet Brumbaugh?
A. Setting on a fence up at some place up there.
Q. What was he doing there when you got there?
A. He was sitting on the fence there with a bundle of grub eating it.
245 Q. Waiting for you people?
A. I suppose so.
Q. Had you any communication with Brumbaugh prior to that time?
A. No sir.
Q. Well, at the time you talked to Kelly at Eugene, did he tell you anything about the expenses and the purchase money for the land?
A. Well, Mr. Roche had the expense money.
Q. Now, after you went to see the land, what did you do? Where did you go to?
A. Went to Roseburg and filed on it.
Q. Who went down to Roseburg with you?
A. Mr. Roche and Mr. Brumbaugh.
Q. Did you go to Roseburg more than once?
A. Yes, twice.
Q. Did Brumbaugh go with you both times?
A. I think he did.
Q. Who attended to publishing notice of proof and getting your witnesses and all that?
A. I do not know.
Q. Did you have anything to do with that at all?
A. No.
Q. How did you ascertain when it was time to go to Roseburg to make proof?
A. I think I was notified by Mr. Kelly.
Q. And when you got to Roseburg what happened?

A. We went in there to prove up.

Q. Who went in?

246 A. Us three fellows, Mr. Roche, Mr. Brumbaugh and myself. I do not know whether that was the time that Mr. Booth said "Stand back awhile the Inspector was there."

Q. How long did you stand back?

A. Half an hour or such a matter, we went back of the main office and sat in the window there for a half of an hour or such a time, and he called for us.

Q. Who called for you?

A. Mr. Booth.

Q. What Booth was that?

A. Mr. J. H. Booth.

Q. Who furnished the funds at the time you proved up, who furnished the money?

A. The Booth-Kelly Lumber Company.

Q. Who carried the money there? Who had it there?

A. Mr. Roche, he carried a check.

Q. Who paid that check over to the officers of the land office for your land?

A. I gave that over myself. He gave me the check when we got to the land office.

Q. Do you remember what kind of a check that was?

A. The Booth-Kelly Lumber Company's check is all that I know.

Q. Did you get any other money besides the check there?

A. No sir.

Q. Did not have any money at all?

A. No sir.

247 Q. Do you know who paid the land office fees outside of the purchase money of the land? The \$400 or \$406 or something like that?

A. No, I do not.

Q. Who paid your expenses to Roseburg? While you were there?

A. Mr. Roche.

Q. Where was Mr. Brumbaugh at the time Mr. Booth told you to stand back awhile?

A. He was right there with me.

Q. Did you have any conversation with Roche at the time you were going out to see the land with him? Or at the time you were going to Roseburg as to the manner in which the entry was being made?

A. Very few words said,—I do not think we spoke but three or four words about it.

Q. Did he make any statement to you about the arrangement he was taking his claim up on?

A. No, sir, he did not.

Q. Was anything said between you as to the amount of money either one of you were to make for your timber claims or both of you?

A. No, sir I do not remember a word about that.

Q. Was anything said about your throwing away your timber right?

A. I believe I mentioned that to him, that we were throwing it away, but they were being taken up so fast, we might as well have the hundred dollars as lose it entirely, and not get any chance to get it.

Q. Did you say all that to him?

A. I said that to Mr. Roche, and he just nodded his head,—might have said something, but I do not remember what it was. That was all the conversation he and I had.

Q. How long was it after you got back from Roseburg before you deeded the land?

A. I cannot tell you exactly,—it was not a great while though.

Q. When you made the deed out, what was done by Mr. Kelly, or whoever did it?

A. Well, Mr. Dunbar came over there as notary public and I signed the deed.

Q. Came over where?

A. To Coburg.

Q. What Mr. Dunbar was that?

A. Harry Dunbar.

Q. What was paid to you when you signed the deed?

A. Sixty-five Dollars in a check.

Q. What has become of the other thirty-five.

A. I bought a colt from him.

Q. For thirty-five dollars?

A. Yes.

Q. The colt was thirty-five dollars, that is the price of it?

A. Yes.

Q. Where was Roche's claim situated with reference to yours?

A. They joined.

Q. Now did you ever see the patent or final receipt for these lands? Or any of the papers that were issued?

A. Well, I got a receipt from the land office and -urned that over to Mr. Kelly.

Q. When did you do that?

A. When I came back from Roseburg.

Q. How long did you continue to work for the Booth-Kelly Lumber Company after that time?

A. I do not remember just how long, I did not work a great while though, I cannot tell just how long it was.

Q. Did you ever talk with Mr. Kelly or Mr. Booth about this claim afterwards?

A. I talked with Mr. Kelly.

Q. When was that?

A. Here in Portland.

Q. How did you happen to talk with him here in Portland?

A. He telephoned for me to come up.

Q. What was going on at the time?

A. The land fraud trial.

Q. What did Mr. Kelly say to you about this claim?

A. I do not remember what he did say.

Q. What?

A. I do not remember all that he did say.

Q. What do you remember?

A. I know he said if I was quiz-ed about it, the best thing for me to do was to keep my mouth shut.

Q. Did you pay Brumbaugh anything for locating you?

A. No.

Q. Did you know him prior to that time?

A. No, sir, that was my first acquaintance.

250 Q. How far was it, or is from Coburg to where this land is located?

A. I cannot say.

Q. Did you have any conversation with Brumbaugh there at the time he was locating you, or at the time this matter was going on, these locations for the company?

A. We talked some, yes.

Q. What was said about it?

Counsel for defendants objected to the question as irrelevant, incompetent and immaterial.

A. I do not know what he did say.

Q. What did he say about receiving his wages, if anything?

Same objection.

A. He said he was going to have a raise if he stayed out any longer.

Q. Were you present at the time Mr. Roche made his proof at the land office?

A. Yes sir.

Q. Were you one of his witnesses?

A. Yes sir.

Q. Did he see him pay for his land?

Counsel for defendants objected to the question as incompetent and immaterial.

A. Yes sir.

Q. What was Mr. Roche doing at that time if you know?

A. He was one of the bookkeepers in the office.

Q. Of the Booth-Kelly Lumber Company?

A. Yes.

251 Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. You say that you were present when Mr. Roche proved up on his claim

A. Yes sir.

Q. Where was that?

A. At Roseburg.

Q. Did you go up there with him?

A. Yes.

Q. Where did you go from?

A. Eugene.

Q. Do you remember when that was?

A. No, I do not, I cannot recall the time.

Q. You say you saw him pay for his land,—that is pay the four hundred dollars, or whatever it was for his land?

A. I saw him turn the check over.

Q. Did you see the check yourself?

A. Yes sir.

Q. And did he endorse the check?

A. Yes, sir.

Q. Who was it paid to,—the money?

A. The check was drawn to Mr. Roche, and one to myself.

Q. Who was it delivered to?

A. J. H. Booth.

Q. He was receiver of the land office at the time?

A. Yes, sir.

Q. Now, at the time you say you talked with Mr. Brumbaugh about the raise of his wages, when was that?

252 A. That was when we were up on the hill there together.

Q. Where?

A. Up in the hills where the timber claim was.

Q. Locating these claims?

A. Yes, sir.

Q. Did he go up with you and show you the land? Locate you on the claim?

A. Yes sir.

Q. Well, his talking about a raise of wages did not have anything to do with locating you on the land did it?

A. No.

Q. You say you talked with Mr. Kelly here during some land fraud trials. I do not know what you mean. I suppose you refer to the land fraud cases that were being investigated by the Grand Jury?

A. Yes.

Q. Were you subpoenaed down here as a witness? Were you here at the time the Grand Jury was in session?

A. No, I was in Clatskanie.

Q. Were you here in Portland during any time of this investigation?

A. I think I was. I think I came through here.

Q. Were you here to appear or testify before the Grand Jury?

A. No, sir.

Q. Did you ever make any statement to any of the officers, 253 at or about that time?

A. No sir.

Q. Ever talk to Mr. Haney, or Mr. Burns about it?

A. No sir.

Q. Do you know Mr. Newhauser?

A. I have heard of him.

Q. Did not you talk to him at Clatskanie, about the case and about your claim?

A. I believe I did,—I believe he came down there, and I talked a little while with him.

Q. When was that?

A. I do not know, that was a good many years ago.

Q. Was that while these land fraud cases were being investigated?

A. Yes sir.

Q. Was it about that time?

A. Yes sir.

Q. What were you doing down there at that time?

A. Running a mill for the Keystone Lumber Company.

Q. How long had you been there?

A. Six or seven months, something like that.

Q. You understood at the time Mr. Newhauser talked to you that he was a special agent of the government, did not you?

A. Yes sir.

Q. And he came there to find out about your claim did not he?

254 A. Yes sir.

Q. Did you tell him at that time, about this arrangement you are testifying about?

A. No, I never told him nothing.

Q. Why did not you?

A. All I told him was that if he could find out that I had made a transfer of the claim, all right, but I would not say anything.

Q. You refused to give him any information about it at all did you?

A. I refused to talk, yes.

Q. Now, didn't you state to him at that time, that whatever arrangement you made with him was after you had made your application to purchase the land, or file on the land?

A. That I do not remember.

Q. Are you sure about that?

A. It is a long time and a fellow forgets those things you know.

Q. You say you do not remember about that?

A. No, I never told him nothing,—he asked me several questions and I refused to talk.

Q. Are you willing to swear now that you did not tell him that your arrangement with them was made after you filed on the land?

A. That my arrangements with them were made after I had filed on it?

Q. Yes, did not you tell him in substance that the arrangement you had with them was made after you filed on the land?

A. Not that I remember.

255 Q. You do not remember about that?

A. No.

Q. You do remember having talked with him down there?

A. Yes sir.

Q. Now, you say the first intimation that you had about this matter was a telephone message from Mr. John F. Kelly?

A. Yes sir.

Q. And you were working at that time in the Coburg mill as a sawyer?

A. No sir, I was running the yard.

Q. How long had you been working there at that time?

A. I cannot say, I worked there about four years altogether at Coburg.

Q. How long did you work for the Booth-Kelly Company all together?

A. Seven or eight years, may be more, I do not remember just how long.

Q. And all he said over the telephone to you at that time, was to ask you if you wanted to take a timber claim?

A. Yes sir.

Q. What did you tell him?

A. I told him yes.

Q. Then was that all the conversation at that time?

A. That was all until I went over to Eugene.

Q. When you went over to Eugene to the office you say you had some further talk about it?

256 A. Yes sir.

Q. Now, who else was present at that time, anybody?

A. Not that I know of.

Q. Had not you asked Mr. Kelly at different times or told him at different times that you would like to get a timber claim, and would like to have him put you on to a timber claim?

A. No sir, that was the first time I ever talked to Mr. Kelly about taking a claim that I remember.

Q. You knew you had a timber right?

A. Yes sir.

Q. Did not you tell him that you would like to get a timber claim?

A. I do not think I ever did.

Q. Well are you sure about it, do you know that you never told him that?

A. Well, I am pretty near positive.

Q. You may have told him that,—it would be quite natural.

A. I do not think I did.

Q. You did want to get a claim.

A. Yes.

Q. It would be quite natural for you to state something of that kind to him.

A. I do not think I did.

Q. You have known John Kelly a long time, have not you?

A. Yes.

Q. And were quite friendly with him were not you?

257 A. Yes sir.

Q. Now, at the time you say you went to the office there in Eugene and had a talk with John Kelly, was there any one else present at the time?

A. No, sir.

Q. Where did the conversation take place?

A. In Mr. Kelly's office.

Q. You and he being present?

A. Yes sir.

Q. Do you remember what time it was,—when it was?

A. I do not know. I do not remember the date, it was in the evening when we had the conversation.

Q. Do you remember what day of the week it was?

A. I do not.

Q. Do you remember the time of day it was?

A. It was after supper, seven or eight o'clock something like that.

Q. Your memory is not very good about things that happen so long ago is it?

A. I can remember it.

Q. But you cannot fix the time or the dates?

A. No, that is pretty hard. I do not keep track of all those little things to remember them.

Q. Now, when you got into the office there with John Kelly, who brought up this matter again about the taking up a timber claim? Did he?

A. Yes sir.

Q. Did he explain to you what you would have to do?

258 A. Yes sir.

Q. What did he tell you, you would have to do?

A. Well, he told me that I would have to go there and look at the claim and go to Roseburg and file on it.

Q. And was that all he told you about it?

A. No, he told me lots about it, I cannot remember.

Q. You cannot remember it at all?

A. No sir.

Q. Well, give us as much as you can remember of what was said there between you.

A. Well, he wanted me to take up this claim.

Q. Give us his language?

A. He told me to go up on the claim that night and he told me not to let Roche have any liquor.

Q. Was Roche a drinking man?

A. I never seen him drunk while I was with him.

Q. Go right ahead.

A. He says Roche has got the expense money. We had to get two horses and went out.

Q. You went out to look at the land?

A. Yes.

Q. Mr. Brumbaugh showed you the land did he?

A. Yes sir.

Q. Did you get the numbers of the land that you wanted to enter from Brumbaugh,—did he furnish you with a description of the land?

A. Yes. We went all over it,—went to the corners.

259 Q. When did you go to Roseburg?

A. I think right away.

Q. The next day or a day or two afterwards?

A. Yes, I think so.

Q. You filed on the land?

A. Yes sir.

Q. Who went up with you?

A. Mr. Roche and Mr. Brumbaugh.

Q. Did they file at the same time?

A. Mr. Roche did.

Q. Mr. Brumbaugh did not?

A. I think not at the time we did.

Q. Now, you said that Mr. Kelley told you to go up there with Roche and Brumbaugh and locate a claim and not let Roche have any liquor, and that Brumbaugh would show the claim, etc.? Is that all he said at that time?

A. No, he said a whole lot, told me about when I was proving up the way I would be questioned and one thing and another.

Q. Well, did he tell you that you would have to take it for yourself and for your own benefit?

A. Yes sir.

Q. You understood that at the time?

A. Yes, sir.

Q. And you went up there and made affidavit that you were taking it up for your own benefit did not you?

A. Yes sir.

Q. And that was the fact was not it?

A. No, I was taking it up for him.

260 Q. Well, did he tell you at that time, that you were taking it for him?

A. Certainly he did.

Q. Well, I thought you just said a moment ago that you were taking it for your own benefit.

A. I was,—the money that I was getting out of it was for my own benefit.

Q. Was there anything said there at the time about any agreement or contract that you would deed it to the Booth-Kelly Lumber Company?

A. No, nothing said.

Q. Nothing said of that kind.

A. No sir.

Q. Now, you do not know of your own knowledge anything about who furnished the money do you?

A. Yes, I had a check.

Q. I know, but you do not know where the money came from do you?

A. It was sent to R. A. Booth, that is all I knew, by the Booth-Kelly check.

Q. Well, you spoke about them furnishing the expense money,—you do not know where that money came from do you?

A. Sure,—I know that Mr. Roche had that.

Q. Mr. Roche had that?

A. Yes sir.

Q. Now, was not that a draft instead of a check,—that four hundred dollar payment,—was not that a draft instead of a check?

261 A. No sir, I think it was a check on the Eugene Loan and Savings Bank.

Q. Do you know the difference between a check and a draft?

A. Yes sir.

Q. You say it was a check do you?

A. It certainly was.

Q. Do not you know that they wont accept checks at the land office?

A. They accepted those.

Q. Well, are you willing to swear it was a check?

A. Yes sir, it was a check.

Q. And not a draft?

A. No, it was not a draft.

Q. Do you swear that they accepted a check there at the land office?

A. Yes sir, I endorsed it.

Q. You endorsed it yourself?

A. Yes sir.

Q. You paid that money into the land office yourself, did you?

A. Yes.

Q. Who gave you that check?

A. Mr. Roche.

Q. Did you see the land office fees paid when you first filed on this claim,—when you made your first trip to Roseburg?

A. I cannot say, I do not remember.

Q. You did not see who paid them, or know whether they were paid or not?

A. No sir.

Q. Well, you know there was some fees to be paid do not
262 you?

A. No sir.

Q. Did anybody say anything to you about paying them?

A. I do not remember.

Q. Was the money furnished you to pay them with?

A. No sir.

Q. Do you know whether they were paid or not?

A. I could not swear to it.

Q. Now, you knew that people were going in there, and taking up claims did not you, and that the timber was being taken up pretty fast?

A. I knew it when I went out there.

Q. Well, you knew it before did not you?

A. I knew there was a good many timber claims taken.

Q. You knew if you got a good timber claim, you would have to get it pretty soon did not you?

A. I never thought much about it.

Q. Did not you say that to Roche?

A. I said it is hard work for us to get out and find a claim, we had better take this than to have nothing, that is what I said to him.

Q. And that was in keeping with your desire that you had had for some time to get a timber claim, was it not?

A. Like all the rest of the people, I wanted to get hold of a claim if I could.

Q. Now, after you went to Roseburg and filed on this claim, what did you do?

263 A. I came back.

Q. Came back where?

A. To Eugene.

Q. Did you see Mr. Kelly then after you came back?

A. I did, I gave him the little receipt that I got.

Q. Little receipt for what?

A. For the money that I paid for the land.

Q. And when you went to file on the land, when you went up there the first time to file on the land, you did not see Kelly when you came back?

A. I believe I seen him, but I never talked to him, at Eugene, when I went on back.

Q. You did have a talk with him?

A. I do not remember.

Q. Did you come back to Eugene the next day?

A. I think I did.

Q. Did not you see Mr. Kelly and talk with him at that time?

A. I think not.

Q. Did not you see him and tell him that you had been up there and filed on the claim?

A. Certainly, he sent me there.

Q. Did not you see him the next day, or whenever you came back?

A. I do not remember.

Q. Did not you see him and talk with him?

A. I might have.

Q. And was not that the time when this hundred dollars was mentioned,—after you had been to Roseburg and come back?

264 A. No sir, it was mentioned before that.

Q. Are you sure of that?

A. Yes sir.

Q. You say you might have talked to Mr. Kelly the next day?

A. I do not say that,—I do not remember.

Q. You said you might have as I understood you,—you said you might have seen him the day you came back and had a talk with him, is that correct?

A. I do not know whether it is or not, I do not remember talking to him.

Q. You never talked with Robert Booth about this matter?

A. Never. No sir.

Q. Now, when did you next talk to Mr. Kelly about this matter, after you had been to Roseburg and filed on the claim?

A. I think when I came back and gave him the receipt, I do not remember when that was, I do not remember when I gave him the receipt.

Q. You gave him the final receipt that you got when you paid for the land?

A. Yes sir.

Q. Is not that called a final receipt?

A. Yes sir.

Q. You came back, where did you see Mr. Kelly at that time?

A. I think I seen him there in his office.

Q. In Eugene?

A. Yes sir.

Q. You say you gave him the receipt?

265 A. Yes sir.

Q. What conversation occurred at that time between you?

A. I do not remember.

Q. Was anything said about the hundred dollars at that time?

A. No I think not.

Q. Was anything said at that time about a deed to the company for the land?

A. No, not that I remember of.

Q. Now, up to that time, there had been nothing said in any conversation about your deeding the land to the company had there?

A. When I went up there and paid for the land and got that receipt, he said that was all he cared for, that little receipt.

Q. Up to that time there had been nothing said about your deeding the land to the Booth-Kelly Lumber company?

A. I think not.

Q. At the time you gave him that receipt was there anything said about the hundred dollars?

A. No sir, not that I remember of.

Q. What conversation did you have with him at that time?

A. About the hundred dollars?

Q. No, any conversation relating to the matter,—what was the conversation at the time you gave him that final receipt?

A. I do not remember what the conversation was.

Q. You did have some talk with him?

266 A. Yes, sir.

Q. But you do not remember what it was?

A. No sir.

Q. When did you see him next?

A. I think he came over to Coburg, him and Mr. Dunbar.

Q. Did you see him with Dunbar when they came over?

A. Yes.

Q. How long was that after you had given him that final receipt?

A. I cannot say. I think six months or something.

Q. Now, you say they came over there together?

A. Him and Dunbar?

Q. About the deed, did they?

A. Yes sir.

Q. You signed it over?

A. Yes.

Q. What was said at that time about the matter?

A. Well, I signed it over and he sent the deed out to Grants Pass to the First National Bank for my wife to sign.

Q. Your wife lived at Grants Pass at that time?

A. She lived at Milan, this side.

Q. Was any money paid at that time? After you and your wife had signed the deed?

A. He gave me a sixty-five dollar check that evening.

Q. When you signed the deed?

267 A. Yes sir.

Q. Had your wife signed it at that time?

A. It was sent out to her at Grants Pass to sign.

Q. She signed it after you had, did not she?

A. Yes sir.

Q. Now, you say the other thirty-five dollars was paid by a colt that he let you have?

A. Yes sir.

Q. When did you get the colt?

A. Oh, I got it quite a while before I took up the claim.

Q. You were owing him for the colt at the time you took up the claim, were you?

A. Yes sir.

Q. How long had you been owing him at that time?

A. I cannot say,—not very long.

Q. What wages were you getting at that time from the Booth-Kelly Company?

A. Seventy-five dollars a month.

Q. Did you have any money of your own at that time?

A. Very little.

Q. You have been around and have been in the logging business and around where timber was being bought and sold for a long time had not you?

A. Yes sir.

Q. You knew that it was illegal to make any bargain to sell this land before you filed on it?

268 A. Well, I certainly knew a little about it, I didn't know much.

Q. Did not Mr. Kelly, when you had the talk with him there in the office, tell you that you could not make any agreement about it before you filed on it?

A. No, I don't remember that.

Q. He told you that you would have to swear to that didn't he?

A. Yes sir.

Q. And you understood that, you could not of course?

A. Yes.

Redirect examination.

(Questions by Mr. JOHN McCOURT:)

Q. Did you have any discussion with John Kelly as to whether or not it was legal, or illegal?

A. Yes, I believe we did.

Q. What did he say to you about it?

A. He told me not to say anything about it, that there was not much harm in it, but anyhow he did not make his business public, or something to that effect.

Q. What did he say about being able to get lots of other people to take up claims?

A. He said he could get lots of fellows to do it, but he would give me a show.

Q. Did you ever make more than one deed to that land? To the Booth-Kelly Lumber Company?

A. No.

Q. Just the one deed?

A. Yes.

Q. How did Mr. Kelly notify you when it was time to make final proof?

A. I think he notified me by phone.

269 Q. When you came back there and gave him that receipt did he tell you when he would pay you the hundred dollars? Or when he would want the deed?

A. I do not know whether he did or not. I do not remember.

Q. Did you know what steps it would be necessary to take in order to get title to the land? In the Booth-Kelly Lumber Co.?

A. How is that?

Q. To get the title to them from you?

A. No sir.

Q. Did you make any question about anything that Mr. Kelly asked you, or told you to do in regard to the matter?

A. I think not.

Q. You accepted his directions in regard to all of that?

A. Yes.

Q. During the proceedings of the filing and making proof did you understand that Mr. Roche was to furnish the expense money?

Counsel for the defendants objects to the question as incompetent and immaterial.

A. Yes.

Q. Who did you understand it from?

Counsel for the defendants objects to the question as incompetent, irrelevant and immaterial.

A. Mr. Kelly.

Q. When you came back there to Eugene before you filed and talked to Mr. Kelly in the evening, where did you have that conversation with him?

270 A. In his office.

Q. The Booth-Kelly Lumber Company's office?

A. No, in his private office.

Q. Back of the building?

A. On the corner.

Q. The building in which the lumber company had its office?

A. Yes, sir.

Recross-examination.

(Questions by Mr. A. H. TANNER:)

Q. Now, Mr. Jordan in answer to my question a while ago, you stated that Mr. Kelly explained to you that you could not make

any agreement about it before you had filed on the claim did not he?

A. No sir.

Q. You say you discussed it with him as to the legality of taking it did not you?

A. Yes sir.

Q. Did not he tell you at that time, that it was illegal to make any agreement about it before you had filed on the claim?

A. No, I do not think he did.

Q. What did he say about its being illegal?

A. I do not think he said much of anything about it.

Q. Did not he explain to you that you had to take it for your own benefit?

A. Yes sir.

Q. And you did swear that you had made no agreement, contract or anything of that kind?

A. Yes, it was for my personal benefit.

271 Q. Did he tell you that you would have to swear that you had made no agreement contract, or anything of that kind with any other person, to take it for their benefit?

A. Yes.

Q. He told you that did not he?

A. Yes, I think he did.

Q. He told you that you had to make oath to that?

A. I do not know what he said.

Q. Did not he explain to you that you would have to swear to those things?

A. He told me a good deal about what I would have to go through with.

Q. Did not he tell you that you could not make any agreement about conveying it until after you had title to the land?

A. No, he did not.

Q. Do you mean to say that you understood that it was an illegal transaction that you were going into?

A. Well, I did not know exactly, I was not very well posted in law.

Q. You said awhile ago that you had been about timber and in the timber business for a long time.

A. I did that.

Q. And you did not hesitate to go into this arrangement did you?

A. No.

Q. Knowing that it was an illegal matter?

A. No.

272 Further redirect examination.

(Questions by Mr. JOHN McCURT:)

Q. Was not it swearing that you were taking the land for your own use and benefit when you had made an agreement to turn it over to the Booth-Kelly Company?

A. Yes.

Q. He told you that he could get lots of other people to do that?

A. Yes.

Further cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. When was it when he told you that?

A. That was when I was going down there to file on the claims.

Q. You testified in answer to my question awhile ago, that there was nothing said about any contract between you and him,—that is, not a contract that you would sell the land to the Booth-Kelly Company.

A. The Booth-Kelly Lumber Company was not mentioned, it was John Kelly himself.

Q. That you would sell the land to John Kelly,—he did not say anything to you, did he about agreeing or making any contracts with him to sell it before you filed?

A. He called me up and wanted me to take up a claim.

Q. That was all there was to it?

A. There was lots more, but I do not remember what, it has been a good many years ago.

273 Further cross-examination.

(Questions by Mr. JOHN McCOURT:)

Q. And after that you did make out a deed for a hundred dollars?

A. Yes.

Q. And Mr. Kelly was taking care of all the bills?

A. Yes.

Further cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. You were interested in getting the benefit of your timber right were not you?

A. Getting the benefit of my right?

Q. Getting the benefit of the timber claim that you knew you had a right to?

A. Yes.

Q. Now, you had a right to the timber claim did not you?

A. Yes.

Q. You wanted to get the benefit of the right,—is not that what you wanted to do in the matter?

A. I wanted the money that is what I wanted.

(Witness excused.)

DANIEL H. BRUMBAUGH is called as a witness for the government and being first duly sworn, testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. You were on the stand yesterday?

A. Yes.

274 Q. You testified yesterday that you were a timber cruiser for the Booth-Kelly Lumber Company in 1902,—what have you been doing the last two or three years?

A. The last two years, I have been working around at odd jobs in the winter time, and in the summer time fire warden.

Q. For whom have you been working as fire warden?

A. The Booth-Kelly Company paid my salary, but there was several companies clubbed in together. They all paid a portion, but I got my salary from the Booth-Kelly Company.

Q. You took up a timber claim about the same time as these claims involved in this suit in this same locality?

Counsel for defendants objects to the question as immaterial and irrelevant.

A. Yes sir.

Q. Where was your claim in relation to the Jordan claim?

A. Well, mine was in thirty-four, townships twenty-one and twenty-two, and his is in section 2, township twenty-two,—1, I think.

Q. Was your claim anywhere near the Dunbar claim?

A. Yes, it joined it.

Q. Joined the Dunbar claim?

A. Yes sir.

Q. State the circumstances under which you took up your claim and with whom you negotiated.

275 Counsel for defendants objects to the question as incompetent, irrelevant and immaterial.

Mr. McCOURT: This is offered on the ground that it shows similar transactions at the same time as those involved in this suit, and tending to show a scheme and conspiracy to defraud the Government out of its public lands in this way.

A. There is not very much to tell,—I can tell it in a very few words. He asked me whether I would take up a timber claim, and I told him I would.

Q. Who did?

A. Mr. John Kelly.

Q. Well, did he state where he wanted you to take it?

A. He told me to pick out a good one.

Q. Did he state what locality?

A. He said on Brumbaugh Creek.

Q. And what else did he say as to what he would do if you did?

A. He told me he would furnish the money.

- Q. What else?
- A. And pay my expenses.
- Q. Anything else?
- A. And give me one hundred dollars.
- Q. Well after he told you that what did you do?
- A. I filed on the claim, but I do not know just how long it was after that.
- Q. Then after you had filed, who took care of the balance of the matters connected with it?
- A. Mr. Kelly, I suppose, I do not know.
- Q. Did you have anything more to do with it?
- A. No sir.
- 276 Q. When did you next do anything in regard to that claim?
- A. When I proved up.
- Q. How did you find out?
- A. I found that out by the advertisement in the paper,—I read the paper.
- Q. Who furnished the expenses?
- A. Mr. Kelly, I suppose.
- Q. Who directly attended to it?
- A. Mr. Dunbar handed me the money.
- Q. Where?
- A. At Roseburg.
- Q. Where did you meet Mr. Dunbar at the time you went to Roseburg to prove up?
- A. I do not know whether he went on the same train that I was on or not. But we met at Roseburg just the same.
- Q. Who else was there attending to the taking of claims at the same time that you proved up, or at the same time you were there?
- A. Well, I do not know. There was three or four others, but I do not know who they were now.
- Q. Did you meet Edward Jordan there?
- A. I cannot swear that he was there, but I think he was.
- Q. Was Mr. Roche there?
- A. I am not positive whether Mr. Roche was there or not.
- Q. Were you one of Mr. Jordan's proofmen?
- A. I guess I was come to think about it.
- 277 Q. Do you recall a transaction that occurred there in the office while you were there,—when you went in there to make proof with Jordan?
- A. I think we had to wait fifteen or twenty minutes for some cause, I do not know what it was.
- Q. You did not hear what it was?
- A. No, I did not.
- Q. Well, after you made proof what did you do with your claim?
- A. I deeded it a couple of years after that to Mr. Kelly, or the Booth-Kelly Lumber Company.
- Q. Deeded it over?
- A. Yes sir, I do not know just how long it was, it was about two years after.

Q. How long was it before you were paid the hundred dollars?
 A. I do not know, it was quite a long time. I did not get the hundred dollars until I made the deed.

Q. You got a hundred dollars at the time you made the deed?

A. Yes.

Q. Did you ever make more than one deed?

A. Not that I know of.

Q. Did Mr. Kelly say anything to you about deeding the land, and what time he was to give you the hundred dollars?

A. No, he never said anything about it.

Q. Who did he say the claim was for?

A. He said "I",—well, that is the way he talked,—he said "I will give you one hundred dollars." He didn't mention any name and he said "I will."

Q. Do you know who you did deed it to?

278 A. I cannot swear now whether I deeded it to him, or to the Booth-Kelly Lumber Company.

Q. Where was it you had this conversation with him?

A. I cannot swear that, for I do not recollect. It was either at Cottage Grove or at Eugene, I do not know which.

Q. You were in the employ of the company at that time?

A. Yes, sure.

Q. Was Mr. Kelly, at that time an officer of the company?

A. I suppose he was.

Q. Was he the man with whom you did all your business for the company?

A. Yes, sir.

Q. That was Mr. John F. Kelly?

A. Yes.

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. How long had you known John F. Kelly, Mr. Brumbaugh?

A. Prior to that time?

Q. Yes.

A. I do not know,—probably a year and a half, possibly it might have been two years.

Q. Were you employed by the Booth-Kelly company at that time.

A. At that time yes.

Q. In what way?

A. I was running a compass most of the time for a cruiser.

279 Q. Had you cruised land for them before that time?

A. I do not recollect ever cruising any up to that time, but I did since that.

Q. You were generally under the direction of John Kelly in your cruising operations?

A. When we were cruising, of course, I went according to the cruiser's orders, the cruiser gave the orders and I obeyed his orders.

Q. You got your orders generally from John Kelly?

A. I do not know where the cruiser got his orders,—I done as he said.

Q. When you went out with the cruiser you mean?

A. Yes.

Q. You ran the compass and located the corners and the cruiser cruised the timber, is that the idea?

A. Yes.

Q. So you went in pairs?

A. Yes sir.

Q. Who was accustomed to cruise with you?

A. Mr. Riggs.

Q. Who did you say?

A. Mr. Riggs.

Q. That was the man who was on the stand here yesterday?

A. Yes sir.

Q. Where did this conversation occur, in which you state that John Kelly asked you if you didn't want to take a timber claim?

280 A. I cannot tell you where it was,—whether it was at Eugene, or at Cottage Grove, I do not know which.

Q. Where were you located at that time?

A. I was located on Brumbaugh Creek.

Q. Up on the hill there?

A. Yes sir.

Q. How far from Eugene?

A. It is about twenty-eight miles I guess.

Q. Was that all that was said at that time about it? If you didn't want to take a timber claim?

A. Yes.

Q. Well, you wanted to take a timber claim did not you?

A. Why, of course I did.

Q. Had not you told him before that that you wanted to get a timber claim?

A. He simply asked me if I would like to take a claim and I told him I would.

Q. And did he tell you to pick out one up there?

A. He told me to pick out a good one.

Q. And you did so?

A. I picked out one that I thought was good.

Q. And then how soon after that did you go to Roseburg to file on it?

A. I do not know, it was pretty shortly,—it was not but a very few days.

Q. Now, when did you come back from Roseburg,—the next day, or how soon afterwards?

A. We stayed one night.

281 Q. You came back to Eugene did not you?

A. At the time I proved up I think I got on at Cottage Grove, and took some people up on to Row River.

Q. Did you see Mr. Kelly at the time?

A. No sir.

Q. When did you next see Mr. Kelly after you had filed on the claim?

A. I do not know—probably a month, or it might have been two months, I do not have any recollection of that—when it was.

Q. Now, do you recall the circumstances of seeing him a month or so afterwards?

A. Oh, I seen him, but I do not know just how long it was.

Q. Well, what occurred between you at that time?

A. When I met him the next time?

Q. Yes.

A. He asked me if I proved up all right and I told him I had.

Q. Is not that when the conversation about the hundred dollars occurred?

A. No sir.

Q. Was anything said at that time about the hundred dollars, or about deeding the land?

A. No sir

Q. When was the talk about the hundred dollars as you now claim?

A. When he asked me whether I would like to take up a claim?

Q. Now, did not he say there would be one hundred or
282 such a matter in it?

A. Sure, he was to give me a hundred dollars.

Q. There was no agreement or contract made at that time to sell the land or to make a deed to the Booth-Kelly Lumber Company was there?

A. Nothing more than that he would give me one hundred dollars.

Q. You did not agree to sell him the claim for that did you?

A. I told him I would take it.

Q. You did not make any agreement that you would sell your claim for that at that time?

A. Nothing more than I told him I would take it was all,—no agreement or anything of that kind.

Q. You remember making an affidavit here before Haney or Burns, or whoever it was?

A. Yes sir.

Q. Did not you swear in that affidavit, that the arrangement you had about this land and selling it was made after you filed on the claim?

Counsel for the government objects to the question unless the affidavit is shown the witness.

Question withdrawn.

Q. Do not you remember anything about what was in the affidavit.

A. That affidavit calls for timber regarding Jones and Cook, most of it.

Q. Was not it in relation to this claim?

A. Something was asked, I do not know exactly what it was now. I do not know just exactly how it was.

283 Q. Who did you furnish that affidavit to?

A. I do not know who called on me for it.

Q. When did you make the affidavit?

A. I do not know that.

Q. Was it during the time of the land fraud investigation here?

A. Well, it was some time during that time, yes.

Q. Did they have you down here before the Grand Jury?

A. Yes sir.

Q. Did you testify about this matter before the Grand Jury?

A. No sir.

Q. You do not know whom you did furnish the affidavit to?

A. I do not recollect.

Q. Did you state anything in your affidavit about your claim, which you have now testified to?

A. There was something mentioned in it, but I do not know just what it was now.

Q. Did not you state in that affidavit, that you had made no agreement to sell the land to Kelly, or to the Booth-Kelly Company, before you filed on the claim?

A. I do not know whether I did or not, because I do not recollect anything about what I put in it.

Counsel for defendants here state that they desire to notify counsel for the government to produce that affidavit.

Mr. McCOURT: We will produce it if we can get it but we never have seen it.

284 Q. Now, you say that you found out about the time to prove up from the paper,—you discovered that yourself?

A. Yes.

Q. You were keeping watch of that yourself?

A. I saw the paper that it was advertised in.

Q. Where was the deed to the Booth-Kelly Lumber Company made?

A. You mean signed up?

Q. Yes.

A. I think it was Cottage Grove,—I would not be positive.

Q. Are you a married man?

A. Yes sir.

Q. Did your wife sign the deed?

A. I think she did.

Q. Did she ever do any talking with Mr. Kelly about the land?

A. No, sir.

Q. When was it you say that you got the hundred dollars or did you get it?

A. When I made the deed, or about that time, or along there somewhere.

Q. The company had furnished you the money to pay the four hundred dollars to the government, and to pay the expenses, how much were they, do you remember?

A. Twenty dollars.

Q. Twenty dollars?

A. Yes sir.

285 Q. That would be four hundred twenty dollars, and they paid your expenses up there, looking over the land, or did you pay your own expenses?

A. I do not recollect about that.

Q. And with the hundred dollars that you got out of it, would be five hundred and twenty dollars?

A. Yes.

Q. Five hundred and twenty dollars, that you sold the land for, was it?

A. Yes, sir.

Q. When was it you made the deed?

A. I do not recollect.

Q. Was there anything said in this conversation you had with Mr. Kelly, as you say before you filed on the claim that you were to deed it to the company?

A. No sir.

Q. There was nothing said about that?

A. No sir.

Redirect examination.

(Questions by Mr. JOHN McCOURT:)

Q. Who handed you this twenty dollars that you spoke of?

A. Mr. Dunbar.

Q. When was that given to you? With reference to the time you made proof.

A. In the Roseburg office.

Q. At the time you looked at this land, you were in the employ of the company?

A. Yes.

Q. And you were engaged in showing other persons land at the request of Mr. Kelly.

A. Yes sir.

286 Q. In regard to this deed matter now, did you pay any attention to the steps that were being taken by him in getting the land from you to the Booth-Kelly Company, or to John Kelly?

A. No sir.

Q. Whose directions did you follow in regard to that matter?

A. I didn't follow any. I didn't pay any attention to it.

Q. Under whose direction was all your actions in regard to the matter done?

A. I suppose myself, that is one hundred dollars of it.

Q. And who was the land for?

A. I suppose for John Kelly.

Q. And the hundred dollars was the purpose that you had in doing these things?

A. Yes, I was doing it for one hundred dollars.

Recross-examination.

(Questions by Mr. A. H. TANNER.)

Q. You knew in order to get the hundred dollars that you would have to get title to the land?

A. Sure, I would have to get the land to get the hundred dollars.

Q. And you knew the only way to get title to the land was to file on it for yourself for your benefit, did not you?

A. Sure I had to file on the land, and prove up on it.

287 Q. Did not Mr. Kelly explain to you that he could not make any agreement with you about it before you filed on it.

A. No.

Q. Didn't he tell you what you would have to swear to?

A. No sir.

Q. You knew before?

A. I did not know before I went out there.

Q. You had been in the timber business, and was at that time?

A. That is the first time I was ever in the land office about a timber claim that I know of.

Q. You knew that you would have to swear that you had not made any agreement or contract to sell the land to anybody else, did not you?

A. I knew I would have to swear that it was for my own benefit.

Q. Is it not a fact that you entered this claim for your own benefit?

A. For the benefit of one hundred dollars.

Q. You got that much out of it?

A. Sure.

Q. You got that much out of it for the benefit of yourself?

A. Sure.

Further direct examination.

(Questions by Mr. JOHN McCOURT.)

Q. This man Dunbar that you mentioned,—who was he? In what capacity was he employed?

A. He was bookkeeper.

Q. For whom?

288 A. For the Booth-Kelly Lumber Company.

Q. Was he taking a claim there too?

A. Yes sir.

Counsel for defendants object to the question and answer as irrelevant and immaterial.

(Witness excused.)

Thereupon, the taking of testimony herein is adjourned until tomorrow morning, December 21, 1910, at the hour of 10 o'clock

A. M.

GEO. A. BRODIE,
U. S. Examiner.

PORTLAND, December 21st, 1910—Ten o'Clock a. m.

At this time appear the parties as before, the government appearing by Mr. John McCourt, and the defendants appearing by Mr. A. H. Tanner, and A. C. Woodcock, and after a discussion between the parties in regard to a stipulation, the taking of testimony herein was adjourned to meet on agreement of parties.

GEO. A. BRODIE,
U. S. Examiner.

PORTLAND, OREGON, January 17, 1910—10 o'Clock a. m.

At this time pursuant to agreement the parties herein appeared before the Examiner of the above entitled Court in the Grand Jury Room in the City of Portland, Multnomah County, Oregon. The Government appearing by Mr. John McCourt, and F. C. Rabb, the defendant, the Booth Kelly Lumber Company, by A. C. Woodcock, and A. H. Tanner, its attorneys; and thereupon the following proceedings are had to-wit:

Counsel for the government offers in evidence a transcript of the entries contained in the books of accounts and records of the Booth-Kelly Lumber Company the defendant, containing memoranda of payment of money by the Booth-Kelly Lumber Company upon account of the land claims involved in this case, and those other claims mentioned in the evidence herein. Said transcript contains all of the payments made by said Booth-Kelly Lumber Company on behalf of, and upon the land claims herein and the transcript mentioned is offered in lieu of the book, and it is stipulated and agreed by and between the parties hereto that the same may be considered as evidence herein in lieu of the books, and it is further stipulated and agreed that there are no other charges or accounts or memoranda of payments made by the Booth-Kelly Lumber Company, on account of said land contained in said book and records of said company, either in the names of the parties entering said land or in the names of any one else.

Counsel for the Booth-Kelly Lumber Company objects to the introduction of the same in evidence on the ground that the same is irrelevant and immaterial and incompetent but does not object to the form of the proof.

The document referred to is received and filed in evidence marked "Government's Exhibit 'K,'" and is in words and figures as follows, to-wit:

290

Edw. Jordan.

1902.

May 8, J. 108-Check	\$400.00	
Aug. 7, J. 209-Credit to J. F. Kelly.....	100.00	
Oct. 23, J. 279 Charge to stumpage for Lots 7, 8, 9, 10, Sec. 2, Tp. 22, 2 w. ....	.....	\$500.00
	<hr/>	<hr/>
	\$500.00	\$500.00

S. A. La Raut.

1902.

May 8, J. 108-Check	\$400.00	
July 31, J. 200-Check	134.50	
July 31, J. 199 Credit		\$34.50
July 31, J. 199 Charge to stumpage for N. E. $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w.		500.00
	<hr/>	<hr/>
	\$534.50	\$534.50

Mrs. S. A. La Raut.

1902.

May 8, J. 108 Check	\$400.00	
July 31, J. 200 Check	100.00	
July 31, J. 199 Charge to stumpage for S. E. $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w.		\$500.00
	<hr/>	<hr/>
	\$500.00	\$500.00

291

Ethel La Raut.

1902.

May 8, J. 108 Check	\$400.00	
July 31, J. 200 Check	100.00	
July 31, J. 199 Charge to stumpage for lots 9, 10, 15, 16, Sec. 28, Tp. 21-2 West		\$500.00
	<hr/>	<hr/>
	\$500.00	\$500.00

Lucy La Raut.

1902.

May 8, J. 108 Check	\$400.00	
Aug. 12, J. 213 Check	100.00	
July 31, J. 199 Charge to stumpage for Lots 1, 2, 7, 8, Sec. 28, Tp. 21, 2 w.		\$500.00
	<hr/>	<hr/>
	\$500.00	\$500.00

Thos. Roche.

1902.

May 8, J. 108 Check	\$400.00	
July 31, J. 199 Charge to stumpage for S. E. $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w..		\$500.00
	<hr/>	<hr/>

1904.

Dec. 31, J. 246 Charge to stumpage for S. E. $\frac{1}{4}$ Sec. 2, Tp. 22, 2 West... ..		\$800.00
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292

H. A. Dunbar.

1902.

May 8, J. 108 Check	\$400.00	
July 31, J. 199 Charge to stumpage for N. W. ¼ Sec. 32, Tp. 21, 2 West		\$500.00

1904.

J. 246 Charge to stumpage for N. W. ¼ Sec. 34, Tp. 21, 2 West.....		\$800.00
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The above accounts are not closed, as salaries are credited and money charged as needed, but above are all the entries regarding claims sold.

D. H. Brumbaugh.

1902.

May 8, J. 108 Check	\$400.00
June 11, J. 148 Compass	8.00
Oct. 30, J. 285 Check	56.50

1903.

May 19, J. 136 Check	100.00
Sept. 22, J. 260 Check	70.00
Nov. 16, C. 205 Check, cash.....	10.00
Dec. —, C. 221 Check, J. F. Kelly.....	10.00
Dec. 16, J. 223 Cash	5.00
Dec. 31, J. 330 Check	83.25

1904.

Feb. 29, J. 38 Check	74.45
Aug. 31, J. 169 Check.....	100.00
Sept. 30, J. 189 Check	399.84

293

1902.

Oct. 23, J. 279 Cruising on Teeters Creek for J. F. Kelly, Trustee....		\$64.50
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1903.

Dec. 15, J. 327 J. F. Kelly, Trustee.....		70.00
Dec. 15, J. 327 Cruising		108.25

1904.

Feb. 25, J. 33 Cruising in Jackson Co....		74.45
Sept. 23, J. 183 Charged to stumpage for N. E. ¼ Sec. 34 Tp. 21, 2 w.		500.00
Nov. 30, J. 225 Cruising and fire patrol...		499.84

\$1,317.04	\$1,317.04
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Stumpage.

1902.

July 31, S. L. La Raut, N. E. ¼ Sec. 26, Tp. 21, 3 w...	\$500.00
July 31, Mrs. S. A. La Raut, S. E. ¼ Sec. 26, Tp. 21, 3 w.	\$500.00

July 31, Ethel La Raut, Lots 9, 10, 15, 16, Sec. 28, Tp. 21, 2 w.	500.00
July 31, Lucy La Raut, Lots 1, 2, 7, 8, Sec. 28, Tp. 21, 2 w.	500.00
July 31, Thos. Roche, S. E. $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w.	500.00
July 31, H. A. Dunbar, N. W. $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w.	500.00
Dec. 31, Brumbaugh, Land Claims.	301.03

294

1904.

Sept. 23, D. H. Brumbaugh, N. E. $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w.	500.00
Dec. 31, Thos. Roche, S. E. $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w.	800.00
Dec. 31, H. A. Dunbar, N. W. $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w.	800.00

1907.

Sept. 9, Pay't on Lots 1, 2, 7, 8, and Lots 9, 10, 15, 16, Sec. 28, Tp. 21, 2 w.	50.00
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1910.

Feb. 3, S. A. La Raut, Pay't on N. E. $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w.	50.00
Feb. 3, Mrs. S. A. La Raut, Pay't on S. E. $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w.	50.00

\$6,051.00

Brumbaugh Land Claims.

1902.

March 18, C. 55:

Adv. Ethel La Raut	\$8.00	
Adv. H. A. Dunbar	8.00	
Adv. Lucy La Raut	8.00	
Adv. S. A. La Raut	8.00	
Adv. Alice La Raut	8.00	
Adv. D. H. Brumbaugh	8.00	
Adv. Thos. Roche	8.00	
Adv. Edw. Jordan	8.00	\$64.00

295 March 18, C. 55:

Fare, Dunbar, Saginaw	\$.72	
Supper .....	.25	
Breakfast and dinner .....	.50	
Fare, Eugene .....	.72	
Fare, Lucy La Raut, Saginaw .....	.72	
Fare, A. H. Dunbar, Saginaw .....	.72	
Supper 25¢, breakfast 25¢ .....	.50	
Orin Robinson, cruising	1.50	
Fare, E. & L. La Raut, Roseburg	4.50	
Supper and bed .....	.75	
Hotel bill, E. L. La Raut	1.50	
F. E. Alley	3.00	
Hotel bill, H. A. Dunbar .....	.75	
Fare, E. La Raut, Saginaw	2.26	
Fare, H. A. Dunbar, to Eugene	3.00	\$21.39

March 20, J. 65:

S. A. La Raut	9.00	
Ethel and Lucy La Raut.....	3.00	
H. A. Dunbar	4.50	
Guy La Raut .....	.50	
Lunch, E. & L. La Raut.....	.80	\$17.80

June 3, C. 117:

2½ days by D. H. Brumbaugh, 2.50.....	8.75	
Fare to Roseburg & return.....	4.30	
Board & Lodging	1.75	
Fare to Roseburg & return.....	5.15	
Board & Lodging	1.25	

296

Fare to Roseburg & return	5.15	
Board .....	.50	
O. Robinson	9.30	\$36.15

July 19, J. 189:

2 tickets, Eugene to C. G.....	\$1.65	
Meals, &c.	1.00	
Pd. Brumbaugh, meals, etc.....	2.10	
Pd. Chrisman & Bangs, horses.....	6.00	
Ex. at C. G.....	1.50	
2 tickets, Roseburg	4.65	
Meals50	
2 tickets, Roseburg to Eugene	6.00	\$23.40

Forwarded	\$162.74
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1902.

Forwarded	\$162.74
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July 19, J. 189:

Recording Fee	\$10.00	
Testimony45	
Fare, Roseburg & return.....	6.00	\$16.45

July 19, C. 151:

Fare, Eugene to Roseburg.....	3.00	
Ethel Ec. & Filing	20.00	
Lucy, Ec. & Filing.....	10.00	
H. A. D., Ec. & Filing.....	10.50	
Hotel, La Raut girls.....	1.50	
Add'l filing fees	14.10	
Fare, Ethel, Saginaw to Roseburg and return...	4.52	

297

Fare, Lucy Wilbur, to Roseburg and return.....	.72	
Hotel, H. A. D.....	2.00	
Roseburg, Eugene	3.00	\$69.84

July 19, C. 153:

July 19, C. 153 D. Brumbaugh.....	\$12.50	
July 19, C. 153, D. Brumbaugh, ticket.....	3.00	\$15.50
July 31, J. 199, S. A. La Raut.....	....	34.50
July 31, J. 201, Saginaw invoice.....	....	2.50
1902.		
Dec. 31, J. 358, Charge to stumpage.....	....	301.03
	<u>\$301.03</u>	<u>\$301.03</u>

It is stipulated and agreed by and between the parties that the Booth-Kelly Lumber Company at all times since the execution of the patents to the entries involved in this case, has paid taxes on this land and has exercised dominion and control over the same, and it is further stipulated and agreed that at all times between the first day of January, 1902, and the first day of February, 1907, Robert A. Booth was manager of the Booth-Kelly Lumber Company and at all times between the first day of January, 1902, and the first day of January, 1903, J. H. Booth was Secretary of the Booth-Kelly Lumber Company, and receiver of the United States Land Office at Roseburg, Oregon.

298 Government Rests.

Defendant's Evidence.

ROBERT A. BOOTH is called as a witness for the defendants, and being duly sworn testifies as follows:

(Questions by Mr. A. H. TANNER:)

Q. State your name, age, residence and occupation.

A. 52 years old, residence Eugene, lumbering and timber business principally.

Q. State your connection in a general way with the defendant, the Booth-Kelly Lumber Company.

A. At the present time?

Q. No, from the beginning of the organization of that company.

A. In the beginning. I was associated with George and John Kelly, and J. H. Booth in a simple partnership and later we formed a corporation, and I have since been a stockholder therein. I was manager from November 1st, 1899, to February, 1907. I have been a director from the time of its organization to the present time with the exception of from February, 1907, to February, 1910.

Q. State what the plant of that company consists of and what its business was?

A. In the beginning it was a lease from John J. John of the property known as the Saginaw Plant, and after operating for a year under that lease, we bought that plant, and since that time, or at

least during a number of years immediately succeeding we
299 added other plants, the Coburg plant by purchase, and we
built mills at Wendling and Springfield, and purchased timber generally, in that part of Lane County, between Douglas and Linn, and we have been operating since that time.

Q. Was the timber purchased mainly tributary to these mills?

A. All of it.

Q. And why was the timber acquired?

A. For the purpose of operating largely. We made some purchases at the time they were made, which had some speculative features about them that we thought we might operate or probably sell, but those tracts of land immediately about the plants, we bought with a view of operating.

Q. Do you recall the circumstances of the entries that were made on this land in what is known as "Brumbaugh Creek Section," by Stephen A. Raut, and his wife, and Ethel M. La Raut and Lucy La Raut?

A. I do.

Q. I will ask you to state what relation you are to those parties just named.

A. Stephen, Ethel and Lucy, are brothers and sisters respectively of my wife.

Q. And Alice La Raut is the wife of Stephen A. La Raut?

A. Yes, she is the wife of Stephen A. La Raut.

300 Q. How long had they been married?

A. Stephen and Alice?

Q. Yes.

A. I do not recall how many years.

Q. How long have you been married to your wife?

A. Twenty odd years at that time.

Q. I will ask you to state whether or not on account of your relation to the La Raut family, you helped them in any way, and if so state in a general way to what extent and in what manner?

A. I frequently have helped them and at different times I have helped all members of the family, several ways. I have at different times given money and property to Narcissa La Raut, my father-in-law, and I have assisted largely in the education of part of his children, two of his boys especially. I have given money and property to the girls, and aided them in getting employment and so with some of the boys.

Q. State whether or not the girls,—I mean Ethel and Lucy, as well as Stephen also, were accustomed to advise with you about their affairs?

A. Yes sir.

Q. You may state what the facts are in regard to their approaching you about these timber claims, involved in this suit?

A. About the time I became active in the management of the company Ethel asked me about getting her a timber claim, and I stated that I would aid her if I could, and later had an opportunity of securing a claim in the Brumbaugh district, and I reported it to her. Some little time after that,—a few days, as I now recall, about

ten days,—she asked if I could do the same thing with Lucy, and I answered that I could, and still later she asked if the same thing could be done with Stephen and his wife, and I stated that I thought it could. And later, finding an opportunity, I reported that I could. I stated to her that I would furnish the money for the claims and carry them until such time as they could dispose of them.

Q. Did she make the arrangements with you for the others as well as herself?

A. She did.

Q. Did you have any talk or conversation with Stephen La Raut, or his wife, or with Lucy about it personally?

A. Not until a number of years after they were taken.

Q. I mean at the time they were taken?

A. I did not with any person, except Ethel.

Q. That arrangement was all made with Ethel?

A. Yes sir.

Q. And the same arrangement was made as to the others that was made as to hers, was it?

A. She asked if they would be given the same opportunity as I had offered her, — that is, carry the claims for them and advance whatever money was necessary until such time as they were able to dispose of the property, and I said that I would.

Q. Were those claims taken by those people for their own benefit?

A. They were.

Q. Was there any understanding or agreement either directly, or indirectly between you and Ethel La Raut or any of the other La Rauts, whose names are involved in this suit, that they were taking or filing upon this land for you, or for the Booth-Kelly Lumber Company, or that they were to deed that to you, or to the Booth-Kelly Lumber — or any thing of that kind?

A. There was not.

Q. Now, what was done with reference to locating them upon the claims in question?

A. In those years, Mr. John Kelly was the acting force there, looking out for timber purchases, and I asked him to look out, or report to me if there was any opportunity to take up any claims that would be near or where these parties could get the benefit of them, and in the course of time he reported the claims that they afterwards took, and I gave instructions that they should be shown the claims, and did such things as was necessary to comply with the law, and furnish the money for securing them.

Q. To whom did you give instructions as to furnishing the money?

A. Mr. Dunbar,—Mr. H. A. Dunbar, he was then bookkeeper for the company.

Q. What instructions if any, was given to him about taking the girls up there to the land office, and assisting them in relation to filing on the claims, and so on?

A. He was asked to do whatever was necessary to carry out the understanding which I have related. I mean to say so far as the

furnishing of the money was concerned. As to the details of going on to the claims and so on, I do not think I gave any instructions about that, that was under the direction of Mr. Kelly.

303 Q. Are you acquainted with Mrs. Applestone who was a witness for the government in this case?

A. I am.

Q. What relation is she to the La Raut family?

A. She is a daughter of Stephen La Raut's wife by her first husband—Mr. Steel.

Q. She testified here in this case, that her mother told her that she and Stephen and perhaps the others, had taken these claims for you, or words to that effect—I will ask you to state whether that is true or not?

A. It is not true, so far as any agreement with me is concerned.

Q. When did you first have a conversation with Stephen and his wife about the claims?

A. In 1908.

Q. You may state the circumstances under which you had the conversation with him about it.

A. Well, I with others was on trial here in the Federal Court at that time, and this young lady came to Portland from Lewiston, and stated to me that she had been called here by the government, and information solicited and so on, in relation to the claims that these parties had secured, and I asked her what she knew about it. She said nothing of consequence, that she had heard her mother say, or talk as to what she would do with some of the funds when they sold their claim. I went to Eugene then and talked with

Stephen and his wife in relation to it. That was the first
304 time it was ever mentioned to them, and I asked them what they had said, and what Ethel had said to them. I have talked with them a number of times since, but that was the first time that I talked to them about it.

Q. What did he tell you that Ethel had told him?

Counsel for the Government objects to the question as incompetent, irrelevant and immaterial.

A. He said as I have stated to her that I would aid them in furnishing the money to get the claims and to handle them to the best advantage, as I had stated to Ethel, and that she had reported to him that if we sold the land where these claims were located, as we probably would that these claims would be put in with ours, and that if we did not sell them, and at a later day, operated them, and could use the timber, we would pay them for it per thousand feet. And his wife confirmed that, and that was what I had said to Ethel.

Q. Now, I will ask you if you recall the circumstance of taking deeds from these parties—that is, from the four La Rauts which you have mentioned?

A. I had deeds made from them to me and I carried them for a time.

Q. Were those deeds made to you personally?

A. They were made to me personally, and were taken as a matter of security.

Q. About when?

A. Well, I cannot give you the exact date, but I think it was soon after the claims were proved up on, or after we had advanced considerable funds.

305 Q. What was the purpose of taking those deeds?

A. To secure us for the money that they had received for them.

Q. Explain if you please, why the deeds were taken by you personally at that time, instead of to the Booth-Kelly Lumber Company?

A. Well, I had stated to Mr. Dunbar that the money for these claims was to come from me, and they were taken for that reason, because I was to be responsible for the money that went into them, whether it was my own funds, or the company's funds. In fact at that time there was no thought or any plan for the company carrying them, and it was expected that the amounts they were to be advanced would be taken from my funds, and I had so directed Mr. Dunbar.

Q. Now do you know about the taking of the second deed- that were made by them?

A. Yes, I do—in part at least.

Q. Do you recall when that was done?

A. That was done after I left the management. It was done under the direction of Mr. George Kelly. I had related to him the circumstances under which these claims were taken and when I went out of the management, he succeeded me.

Q. When did you go out?

A. Well, the election was in February, 1907, I do not remember the exact date. I aided him more or less until the first of April following, and the deeds were taken in 1907, to the company.

306 Q. You were succeeded as manager by George H. Kelly?

A. Yes.

Q. Now, did you explain to Mr. Kelly when you went out as manager, the condition under which, or the condition in which these claims were in?

A. I explained it fully to him, and said to him that if the company continued to carry them as they were carrying them at that time, that I would be responsible to them for the return of their money, and interest and costs, provided they did not buy the claims afterwards, and I related to him carefully what had been said to Ethel in relation to the claims.

Q. Were these second deeds after patent had been issued, or do you know about that?

A. I cannot state positively, but it was my understanding that they were. The understanding then was, that the company was carrying these under my guarantee, and it became necessary for their protection as security, to get the deeds of record so far as Stephen La Raut was concerned, because he was considerably in-

volved and he was threatened with litigation, that might result in a judgment, and for that reason, deeds were taken and recorded.

Q. Now what was the purpose of those second deeds, or did it change the title in the company?

A. To transfer it from myself. To turn them over to the company, because Mr. Kelly agreed that they would carry them, and they had the deeds running to them.

Q. Now what is the fact, so far as you know as to which of the claims had been carried in that way?

307 A. The claims of Ethel La Raut and Lucy La Raut have been carried in that way. The claims of Stephen and his wife were carried in that way until the time he prepared to go to Canada last spring, then he came for the purpose of selling his claim and receiving whatever money he could for it and I stated to him that I was not manager, and that it was a matter for Mr. Kelly, and I told him to see Mr. George H. Kelly about it, which he did. Mr. Kelly had notified the directors of the company that he did not want to or would not serve any longer as manager, and it was about the time that he was being succeeded by Mr. Dixon.

Q. As manager?

A. As manager of the company, Mr. A. C. Dixon. Mr. Kelly went to Mr. Dixon and spoke to him about the matter, and related to him what had been stated to him by me when Mr. Kelly was succeeded by me, and Mr. Dixon said that he was new and had hardly got hold of the ropes and referred him back to Mr. George H. Kelly, and he negotiated with Stephen La Raut for the claims, and purchased them, and the others are still carried.

Q. That is Ethel's and Lucy's?

A. Ethel's and Lucy's are still carried.

Q. Is it your understanding that they still own their claims?

A. It is.

Q. And that these deeds were simply held, or are simply held as security for advances made by the company?

308 A. That is right, yes sir.

Q. Now at the time this arrangement was carried on between Mr. Dixon, the present manager, and Mr. Kelly, when he reported to him the condition under which these deeds were held, were you present at that time?

A. I was present when Mr. Kelly talked to Mr. Dixon, but I was not present when Mr. Kelly talked to Mr. La Raut. Although Mr. Kelly did come to interview me after Mr. La Raut first approached him.

Q. Now, you may state what was said there between Mr. Kelly, Mr. Dixon and yourself in explaining to Mr. Dixon how the deeds for these claims were taken, and the condition of these claims and what was said and done there at the time?

A. Well, I made such statements as would put them in possession of the facts that they might know exactly my relation to the transaction, and the understanding with the La Rauts, so that he might deal with them as I probably would have done if I had been in a similar place, so that he would be in possession of what

ever information I had and could deal with him as he thought proper. I simply meant to put him in possession of all the facts.

Q. Did you state them as you have stated them here in your testimony?

A. I did. I do not mean that I measured every word. But so far as the facts are substantially concerned, I stated to him then as I have now in answer to your question.

309 Q. This Mrs. Applestone already referred to testified that she saw there in her mother's possession, forms of questions and answers written out as coming from the land office, or something to that effect, and testified that her mother told her that you had sent them to them, or something to that effect. I will ask you to state whether or not you did send them any such blanks with the answers filled out, or anything of that kind?

A. I did not. Her statement is the only knowledge I have of that.

Q. Do you know what the fact is as to whether those blank forms are given out to people who are contemplating filing on claims?

A. I know that it was a common practice for people to learn what was necessary to testify to in making the ordinary proof.

Q. I will ask you to state what the facts are Mr. Booth if you know, as to the manner in which these claims were entered on the books, and whether or not they were entered as a separate batch of claims—separately from the other lands of the company, or how they were carried, on the books of the company.

A. They were meant to be carried distinct from the others, so that we might know the advances that were made to the different individuals. In fact they were different from any other claims or groups of claims. They were taken by relatives, or by old employes of the company, almost without exception, and the purpose of entering them the way they were, was that we might readily ascertain the amounts that had been advanced, so that we
310 could properly settle with them. Mr. Dunbar was instructed so far as the La Raut claims were concerned to keep all the items so that they might be charged into my account, or handled as I might direct.

Q. I will ask you to state Mr. Booth if you have knowledge on the subject what claims in that section of the country, timber claims such as these were, were worth at that time—that is at the time they were taken and filed upon by these parties and for a number of years afterwards?

A. The section of country where these claims were located, was not tributary to our milling operations, and we went there as an investment, with a view of selling the claims—selling the land. Our first purchase in that locality was from Jones and Cook. They had gotten together the best lands on the Brumbaugh, select land purchasing from the railroad company and from settlers and we purchased in round numbers fifteen thousand acres from them at \$5.25 an acre, but at the same time on the opposite side of the river and tributary to our Saginaw operations, we purchased land for \$3.50 an acre. The claims that I referred to here were not con-

sidered as good as the average claims in there, and had not been considered worth while for Mr. Jones and Mr. Cook when they selected their claims—that is to say, they were on the fringe—they were considered young growth, and at that time not considered to be worth very much, and if we had purchased them, we would not have given anything like five, six or seven hundred dollars for them as we were giving at that time for other claims that were located better than these, so far as it relates to convenience to our plant was concerned.

Q. Was that the full, fair price for them at that time?

A. It was, there was no market value except as we had established it. That corresponds with the prices that were given and in existence at that time.

Cross-examination.

(Questions by Mr. JOHN McCOURT:)

Q. When did you become manager of the Booth-Kelly Lumber Company?

A. I was elected in October, 1899, and took charge on November the first following.

Q. And continued to be manager up to February, the first, 1907?

A. Up until February, 1907.

Q. During all that time John Kelly looked after the purchasing of timber for your company?

A. I cannot say that.

Q. Most all of the time?

A. During the formative period of our company when we were active in buying that work was assigned to Mr. Kelly.

Q. When were you active in buying?

A. From the time of the organization of the company until several years afterwards.

Q. You were active until up to 1904 or 1905?

A. We purchased considerable continually, but not actively for a couple of years or so back.

312 Q. When did you buy that Jones timber for \$5.25 an acre?

A. In 1901.

Q. What time in 1901?

A. January.

Q. When did you buy timber for \$3.50?

A. About the same time.

Q. How much had that timber increased from 1901 to 1902?

A. Nothing of any consequence.

Q. The market had grown stiffer, had it not?

A. I think not.

Q. Up to 1904, had there been any material increase in the value of timber there?

A. It is hard to say, the relative value in any given years, but it has been generally toning up, and of course it is worth more now.

Q. Well, those claims that were on the fringe, would they have been worth any more than \$5.25 an acre in 1904?

A. It is hard for me to recollect the purchases, but not of any consequence. I do not think we considered them desirable. I think they were young growth, and not clear, in consequence, and were not very big claims. They had been reported to me as being about four million claims and as we cruised timber then, of course, it was not very large. As we cruise timber now, of course, they would produce more.

Q. Now, you want to convey the idea that your purpose in assisting these claimants in getting these claims, was to aid them somewhat in a financial way?

313 A. I did it to aid them.

Q. That was your purpose in doing that?

A. Yes.

Q. And that was the intention of the Booth-Kelly Lumber Company to carry that out was it not?

A. Yes.

Q. None of these items were ever charged against you?

A. No.

Q. You never were asked by the company for an item advanced?

A. I was not, I simply guaranteed the account.

Q. You did however, tell Mr. Dunbar that this was to be charged to you?

A. Yes.

Q. Why did not he charge it to you?

A. Because the company agreed to carry it under my guarantee.

Q. You say that was in 1907, that was five years afterwards.

A. I did not say that that was in 1907.

Q. It was in 1907 that you went out as manager?

A. Yes.

Q. And it was in 1907 that these new deeds were given.

A. The deeds were taken to me as security for the money advanced, and it was taken in my name as security, and it was taken by the company as security in 1907.

Q. Was not the company carrying the account when you took the deeds?

314 A. It was. It was charged to the individuals that they had advanced the money to.

Q. How did it come that you carried the deeds in your name?

A. Because I was guarantor for the money.

Q. What was there on the books to show that you were guarantor?

A. The books do not show that I was.

Q. There was nothing that shows that you had any interest in any of these things at all?

A. Not that I know of.

Q. You have examined them?

A. I have not examined them.

Q. Well, you understand that they do not show any connection between you and these lands?

A. I understand that they were charged to the individuals—the money was kept so that it could be charged to my account.

Q. But these claims were carried into the stumpage account, and the stumpage account was charged with these amounts without any indication or reference to you whatever?

A. My understanding is, and it is a fact, that they were charged directly to the individuals until such time as it was arranged that the company should carry the accounts, that is to say—the amount which had been advanced was charged to the stumpage account.

Q. I call your attention to the stumpage account of the company, and I ask you to note the items there, and see if it was not
315 charged into the stumpage account on the very day the hundred dollars was paid, and the deed to these claims was made to you?

A. If you will refer to each name, and follow it out you will see what it shows.

Q. Don't the stumpage account show that S. A. La Raut, Alice La Raut, Ethel La Raut and Lucy La Raut's land was carried into the stumpage account under that date in 1902 (showing)?

A. It shows that it was charged to stumpage in July, 1902.

Q. July 31st.

A. July 31st.

Q. Upon that day the parties were paid \$100.00 each as shown by the account?

A. Some of them were, and some of them were paid more.

Q. Which ones were paid more than \$100.00?

A. Well, I notice that S. A. La Raut is charged \$134.50 on that day.

Q. Do you recollect what that \$34.50 was for?

A. No I do not.

Q. And the others were all paid a hundred dollars?

A. I do not recall any of the items of payments because it was done by Mr. Dunbar under my directions.

Q. Those lands then were carried into the stumpage account immediately were they not, upon payment of this hundred dollars?

A. They were carried into the stumpage account at the
316 time the arrangement was made that the company should carry them.

Q. When was that arrangement made—when the company paid the hundred dollars?

A. I do not know whether it was prior to that, I assume that it was about that time.

Q. Why were the deeds made to you if it was prior to that?

A. The deeds were made to me, as I have testified to secure me for the money that I intended to advance them at the time I gave the directions.

Q. I understand that the company took your place did it not?

A. They did.

Q. When they took your place, were you not willing that they should take your security?

A. They took my security later.

Q. Was there any security to the company except the land?

A. I had made a statement to John Kelly and Mr. Dixon, that I would be responsible.

Q. Nothing was put upon record?

A. It was not necessary.

Q. Was the land sufficient security without your verbal guaranty?

A. It was not, because the company did not know what the parties would do with their claims.

Q. Why did you advance them a hundred dollars on the day you took them over?

A. Simply to aid them just as I have advanced them other funds at other times.

317 Q. Why did you conclude this arrangement with Stephen La Raut?

A. I never concluded it with Stephen La Raut, Mr. George Kelly concluded it.

Q. Mr. George Kelly understood it?

A. Understood what?

Q. That Stephen had some claim on the land?

A. He understood that the claim belonged to Stephen La Raut, like all the other claims that had been assigned to me as mortgages.

Q. What was Stephen La Raut's claim worth?

A. I do not know what they were worth in there. Of course, I have my own idea that they were worth very little.

Q. What is your idea?

A. I would not want to buy it for over fifteen or twenty cents per thousand feet. In fact, I did not care to buy at all in there, as the operations of the company in there for a number of years have been at a loss, and there is no market for their timber, and it has been so for a number of years, the company has been operating at a loss.

Q. Yet Stephen La Raut's claim would be estimated at anywhere in the neighborhood of two thousand dollars in value?

A. It would not come any where near that.

Q. It would not?

A. No.

Q. Do you remember the Roche and Dunbar claims in there?

A. I do not.

Q. Do you know anything about them?

318 A. Well, I do not know my recollection so far as that was concerned is only in a general way, that they are all in the same group of claims. As I said they were taken on the fringe around the land that we purchased, and they were a lower grade than the average grade of claims that we secured.

Q. Claims now in there are worth something more than they were in 1904, are they not?

A. Yes.

Q. How much per cent more?

A. Well I have not had anything to do with the purchasing since I went out.

Q. You kept a close tab on the company's business and you must have formed some idea of the value of timber, what is your estimate?

A. I have given you my idea of value.

Q. What was the value, or what is the value in excess of what it was in 1904?

A. Well, since 1904, I would say that it has raised in a general way fifty per cent, probably more than that.

Q. Now omitting the idea of time, from the claim of S. A. La Raut, you paid him on July 31st, 1902, \$100.00 over and above the amount the land had cost, and on February the third, 1910, the company paid him fifty dollars more for the land, making \$150.00 for this claim, and I notice in 1904, in this same locality that you paid Dunbar and Roche thirteen hundred dollars each for their claims,—now in what way were you helping La Raut there more than you were other people, that being the state of the records?

319 A. We helped him to the extent of the money that he received for his claims.

Q. \$150.00?

A. Whatever the records show, and if he had held his claim as I desired him to do, and recommended him to do, he might have gotten a great deal more out of it.

Q. How is it that you were willing to pay Roche and Dunbar each thirteen hundred dollars for their claims, and you were only willing to give Stephen La Raut whom you wanted to help, five hundred and fifty dollars, or five hundred and sixty dollars for his claim counting the government price?

A. I did not buy Mr. La Raut's claim.

Q. I understand that you informed Mr. George Kelly, and he bought Mr. La Raut's claim?

A. I informed him as to what I had said to Mr. La Raut, and that I had advised him not to sell. I had nothing to do with the purchase of the claim, and I never knew until this case came up, what was paid to Dunbar and Roche for their claims.

Q. You say that you never talked with La Raut until 1908 about his claim?

A. It was the time that I was being tried.

Q. Did not you talk to Mr. La Raut about 1905 about the time that he was down here before the Grand Jury?

— — did not talk to him until the time I stated.

Q. You did not talk to him at the time he was before the Grand Jury?

A. I have no recollection of it.

320 Q. Did not you talk to him last December at the time the Special Agent was up there?

A. I did not. I did not know the Special Agent was there. I have talked to him a number of times about other questions, since that has come up.

Q. Since 1908?

A. Yes, because he has frequently talked about selling out and going to Canada, and he has also talked about purchasing my home near Saginaw, which I offered to help him to secure. And I helped him with five hundred dollars.

Q. Is that secured?

A. No, it is not secured, he has no way of securing it.

Q. This purchase that the company made from La Raut, did that cancel the debt by the company taking the land?

A. It paid the cost of the land.

Q. All was to be cancelled, that was the final disposition of it?

A. When he sold the claim he was to repay the company with interest, and if the company should purchase the claim he was to get the purchase price.

Q. If that is the case, do you know why the parties were not charged with these particular amounts that are entered on the books?

A. It was not necessary.

Q. It would be the ordinary thing to do?

A. Not necessarily,—any method by which we could ascertain the facts would be satisfactory and proper.

321 Q. Well, it would be necessary for yourself or Mr. Kelly or some of you people that had got this little understanding about this money to be in control of the company at the time of the settlement, or else there would be nothing to show the actual condition, would there?

A. Well, it would be easily understood, the land is all assessed.

Q. Does not the assessor up there carry a charge against each tract?

A. I do not know what the assessment shows, but I presume that they are assessed against the land at an average price per acre, and it would be just the same if a claim has four million on it, as if it had ten million on it. They were in the Brumbaugh District and lands in that district would be assessed at an average price. That record is always obtainable and easy to get at.

Q. I call your attention to another matter in connection with this account,—that there is charged against the Brumbaugh land claim, a large number of small items amounting in the aggregate to \$301.25 or something of that kind,—and you will notice that no account was taken against any particular claim.

A. Do you mean to ask why it was not segregated and charged to these claims?

Q. In connection with your testimony that they were carried in that manner to show what was charged against each claim?

A. Because it could be easily ascertained.

Q. What was there in the account to show for instance, take the Ethel La Raut account?

322 A. The description of the land shows what it was absolutely.

Q. You would have to go to the stumpage account?

A. You would go to this account.

Q. Why did you carry a stumpage account at all? If they were not the company's lands, and the company had nothing to do with them, except to hold a mortgage on them?

A. Because they furnished the money, and they had to carry them in some account.

Q. Why did not they carry them in the individual account, instead of in the stumpage account?

A. They would have to carry them some place in the ledger, and that was only a question of bookkeeping.

Q. If the company had bought the land and had taken a deed for it, would it not appear in the books the same way as it does?

A. No, if we had purchased it, there would be only one transaction, showing the claim purchased, the price paid, whether one thousand, two thousand dollars, or five hundred dollars, and a charge made to stumpage account, but these several items are carried there so that we could ascertain readily the charge against the individual in determining what might be due at any future time.

Q. How did it come that you were carrying Roche and Dunbar?

A. I did not make any arrangement with Mr. Dunbar, I had nothing to do with the Roche and Dunbar claims.

323 Q. Is it not a fact that all of the employes of the company that took up claims and later sold out to the company were carried in just exactly the same manner?

A. It is not. That was the arrangement that related to those claims and to none other.

Q. Do not the books show other transactions that were carried in that manner?

A. What time?

Q. About this time in 1901.

A. No. We also rule an account down whenever we can, because it is necessary to reduce accounts to the minimum.

Q. And there is no single entry in this account after that date?

A. No, they are carried in the way that I have designated, so that every item could be easily ascertained because they are in there.

Q. What I am getting at is the fact that the account of S. A. La Raut, or Ethel La Raut, or Lucy La Raut do not show any entries since 1902, when those deeds were taken.

A. Well, it does not, because there was no account with them.

Q. But you carried those entries over and put them into the stumpage account?

A. It shows just the same. Just exactly the exact status, and any method that did this was satisfactory.

324 Q. If you were carrying an account with Ethel La Raut since 1902 in the books of the company and doing business with her, you would carry an account under her name would you not, ordinarily?

A. I said any method that would show the items would be satisfactory, whatever that might be.

Q. And you carried them in stumpage?

A. They were carried in stumpage.

Q. And that would be the same as though they belonged to the company?

A. No, the company would not have had any of those auxiliary or subsidiary accounts if they had purchased the lands outright. It would simply recite that a certain tract of land was bought and certain price paid, and there would be one entry, and there would be no record made of any such things as we have there, taxes that we have

paid on the land, Land Office fees and money advanced for the purchase price.

Q. There is nothing of that kind here.

A. There is.

Q. After 1902?

A. Well, they would not enter them twice. They wouldn't carry them on beyond the time when they were paid.

Q. I understand about that. I am showing to you that if you had bought this land outright as the government claims you did, you would have made exactly the same entires as you have made, would you not?

A. I said not.

325 Q. What is there that you would not have done?

A. If we had purchased them outright, we would have made simply one transaction in the book, describing the lands, the price paid for them, and would simply have carried them into the stumpage account, but if the company had agreed to carry the land, until they should finally be disposed of, it would be necessary for them in settlement to know exactly what the total cost was, and how they had accrued and for that reason the entries were made as they are.

Q. Did you ever tell any of the La Rauts, Stephen, Alice, Ethel, or Lucy what those lands were worth?

A. I never have.

Q. What they could get for them?

A. I never have.

Q. They have never asked you?

A. They never have. I refer to Lucy and Ethel, and I never have as to Stephen. He came to me about the time I was retiring as to the selling of his claim.

Q. Did you tell Stephen La Raut what his claim worth?

A. I did not.

Q. In 1910 when he came to you, when he wanted to go to Canada did you tell him what his claim was worth?

A. I did not.

Q. Did you give him any information?

A. I simply referred him to Mr. Kelly.

326 Q. You did not tell him a single thing about his claim, or give him any information about it at all?

A. I did not.

Q. Did you tell him he could get more money?

A. I did not. I simply referred him to Mr. Kelly.

Q. You were trying to assist him, and help him get a start, and you thought it would be all right to get this claim for \$150.00?

A. I did not know what he would sell it for.

Q. It was about this time that you talked to George Kelly?

A. About the time I retired?

Q. No, in February 1907.

A. No, I talked to Mr. Kelly at the time he and Mr. Dixon were together.

Q. When was that?

A. A year ago.

Q. What did you say to him?

A. I recited the circumstances under which these claims were taken, and told them what the facts were, so they might be in position to negotiate with Mr. Stephen LaRaut for his claim, for at the time Mr. LaRaut was seeking to sell his claim.

Q. Did you tell the same thing about Ethel and Lucy LaRaut's claims?

A. I did.

Q. Tell him all about it?

A. Yes.

Q. Can you tell how it comes then, a few months later he swore to the answer in this case, and claimed absolute ownership of those claims?

A. I do not know anything about what he swore to, I
327 know what statements I made.

Q. Did you see this answer?

A. I did not.

Q. Never have?

A. No, sir.

Q. You do not know how he happened to forget about those times that you told him?

A. I do not know.

Q. You are very much interested in the case?

A. Well, no.

Q. You were at the time you were sued?

A. Not to any consequence, my interest is very slight, I own something like $2\frac{1}{2}$ per cent. or 3 per cent. of the stock of the company.

Q. You were more interested in the charge contained in the complaint that you had been in fraudulent transactions than you were in the financial side of the case?

A. No I was not particularly concerned about that.

Q. You never did know until the question was asked you that Dixon had sworn that the company had the absolute ownership of the land?

A. I did not know what he had sworn to as I told you before.

Recess until one o'clock.

Afternoon Session.

Present same parties as before.

R. A. BOOTH resumes the stand; cross-examination continued by Mr. McCourt.

Q. What did you do with those deeds from the LaRaut
328 people that you say were delivered to you or made in your name in July 1902?

A. They were taken up as I remember it, and destroyed, and the other deeds were taken.

Q. When were they destroyed?

A. I do not remember the time.

Q. With reference to the time the other deeds were made?

A. I cannot say.

Q. How long before?

A. I cannot say.

Q. What is your best impression as to the length of time it was?

A. I have not tried to fix any of those things in mind, I only know that they were taken up.

Q. What was done with them during the time they were in existence, where were they kept?

A. In my desk I think.

Q. Where?

A. In my office.

Q. Of the Booth-Kelly Lumber Company?

A. Yes sir, the office of the manager where all my papers were kept.

Q. And where the deeds of the company were kept.

A. The deeds of the company were kept in the vault of the company.

Q. Were not these deeds kept in the vault too?

A. My recollection is that they were kept in my desk.

Q. What kind of a desk did you have?

329 A. An ordinary roll-top oak desk.

Q. Why did not you deliver them to the company? And have them kept on file the same as the other deeds inasmuch as the company had assumed your place?

A. There was no occasion to do that, I would protect the company and save it harmless, I was the manager.

Q. There was nothing on the records of the company to show that you were responsible for these liabilities that the company had assumed?

A. There was no occasion for that, I would protect the company.

Q. There was nothing in the books of the company to show that you had anything to do with these claims?

A. It was understood.

Q. Have you any recollection of the payment of \$25.00 each to Ethel and Lucy La Raut in 1907?

A. I have no recollection of when it was paid.

Q. You remember that they were paid something of that kind?

A. Nothing more than what I noticed by the record. I know they could have had that amount if they had called for it.

Q. Did they ever call for any other money than that twenty-five dollars?

A. So far as my knowledge goes, they were never refused any money.

Q. Didn't you furnish them with some money during that time?

330 A. On their claims?

Q. No, any old way?

A. I furnished money to Lucy, yes.

Q. How much?

A. Frequently—I gave her fifty dollars twice that I remember of.

Q. You did not charge that against her claim?

A. No.

Q. And did you furnish Ethel any?

A. Ethel was in our employ, and did not require any, and I have no recollection of doing it. She came into the employ of the company about that time, or prior to the time that she took her claim, and of course, had a salary, and Lucy was home on the farm.

Q. How does it come that you did not make any charge against her for these fifty dollars and yet you charge her this little dinkey sum of twenty-five dollars?

A. Because the company advanced that money. It was their money, and not mine. I have given her money and given her clothing and articles at different times and boarded her and helped to educate her and sent her to business college since she has been there.

Q. You n-ver made any entry of that in the books.

A. Not in the books, I gave her those things, she lived there.

Q. How did it come that when she took a timber claim, she was charged with these little items?

A. Because the money was furnished her.

Q. What was the purpose—why didn't you furnish her
331 the sum of twenty-five dollars and let her take the claim herself, and not burden the company with it?

A. I do not see that there was any occasion for me to do it.

Q. I notice here in this account, that you have her charged up with an item of eight dollars, an item of fifty cents for breakfast and supper, and seventy-two cents fare, and lunch for Ethel and Lucy eighty cents,—how did it come that you began to keep such close tab on those items when you were so generous with the other items?

A. Those related to their claims, and a record was kept of those things so that in the future if the claim was sold, we would have a memorandum. They had nothing to do with what I had given her.

Q. Well the company had the Dunbar and the Jordon claim, and the Roche claim and the Brumbaugh claim, they were in the same locality?

A. That is my understanding.

Q. About the same times that these transactions were being conducted?

A. I do not remember the date, because it is of record, but they had nothing to do with the La Raut claims.

Q. Well, do you recollect that you advanced money to Stephen and Alice La Raut during this time?

A. Do you mean money to be returned, or did I make them a gift?

Q. To make them a gift, or let them have money, or aid
332 them.

A. Nothing except in the way of holiday times, and such things as that, we have always been generous in making them gifts, I do not recall anything beyond that. I helped Stephen at one time,

as I now recall, when he got pressed on an old account, I let him have five hundred dollars, or something like that.

Q. Stephen La Raut worked for you also about that time?

A. He worked for the company, yes.

Q. How long did he continue working for the company?

A. Until he went to Canada.

Q. In 1910?

A. Yes sir.

Q. When did you first tell Dunbar to advance these moneys with reference to the time the claims were taken?

A. Probably about that time.

Q. Did you tell him what the arrangements were?

A. Yes, I told him, that I was to advance them the money, and to let them have what was wanted, and it was to be charged to me, and to keep a proper record of it.

Q. Did it ever occur to you to inquire what charges had been made against you on the books?

A. I knew of the payment that had been made of a hundred dollars, and of course I had general knowledge of about what the cost of the claims would be.

Q. Did you direct him to pay him one hundred dollars?

333 A. I presume I did, or whatever sum it would be. He would not have done it without my authority, but he would have felt perfectly free to pay them under the general directions that I had given him.

Q. You did not tell him when you told him first about this, that they were to receive one hundred dollars right after they made final proof?

A. I do not remember telling him any amount at all.

Q. Not when they gave the deed?

A. No.

Q. When you directed him to pay the hundred dollars, did you tell him that you had taken a deed?

A. I do not know.

Q. He did not make any entry in the book that the deeds had been taken to you for that \$100.00?

A. I do not know that there was any occasion to make it, I do not know what kind of an entry he would make.

Q. Why were those claims called the "Brumbaugh Land Claims?"

A. Because they were on the Brumbaugh river.

Q. Is that a river or creek?

A. Well, it is marked Brumbaugh River on the map. It is not a large stream. It is probably a tributary of the Row River, which is a tributary of the Willamette. It is a stream where some of our timber at that time was located and we knew it always as the Brumbaugh Territory.

334 Q. Brumbaugh was a cruiser out there at that time?

A. I do not think this creek or river was named for him, it was some relative.—his father probably.

Q. Daniel Brumbaugh was a cruiser out there at that time?

A. Yes, sir, before and since,—very generally in our employ.

Q. Why did you not put those deeds on record Mr. Booth that you had there, that you claim were made in your name?

A. There was no occasion to put them on record that I can see. The later deeds were recorded for the reason as I have stated, that we were afraid of a judgment against Stephen.

Q. Were you afraid of a judgment against Ethel, Lucy and Alice?

A. Against Alice, yes, but we thought to treat them all alike.

Q. You recorded them all at the same time?

A. That I do not know, whatever the record shows will be the fact.

Q. Now, do you know about a special agent being up there last December looking into these cases?

A. Last month do you mean?

Q. Last December, a year ago.

A. Well, I do not know—I know that special agents have been there at different times, they have been in our office, and I have talked with them about these claims at different times, and have shown them our records,—I do remember just the time.

Q. You never showed them this record, that is in evidence 335 here?

A. That was only just made.

Q. Just made, but your books contain those items?

A. I showed them the plats of our land, and the condition of the title.

Q. You never offered to show the agent these accounts?

A. I showed them just what they called for.

Q. You did not volunteer anything?

A. Well, I might possibly have done so, I do not recollect.

Q. Didn't you in December, 1909, have a conference with Mr. Dixon of your company and your attorney, and the La Raut girls, and Stephen and Alice in relation to the inquiry being made about them by special agent Lavin?

A. I cannot say. I have talked but very little with him about those claims.

Q. Did not you determine at that time, to have each one of them write the special agent for him to submit a list of questions and that they would write to their attorney about it?

A. I did no.

Q. You were very much interested in those La Raut claims, inasmuch as you had guaranteed the company?

A. I had no special reason, I know that the company had the deeds and that they were perfectly safe.

Q. Did not you talk with La Raut and try to enter into 336 an understanding with him that he should tell the special agent that your wife had furnished the money?

A. No. My wife never furnished any money, and I never told any one that she did.

Q. You never told La Raut to tell the special agent that?

A. What La Raut do you refer to?

Q. Stephen?

A. No, nor no other La Raut.

Redirect examination.

Questions by Mr. A. H. TANNER:

Q. Some reference was made in the testimony to some trial that you had here, some time in 1908, I believe it was,—what was the result of the trial?

A. I was acquitted.

Q. Had your trial in that matter any connection with these claims?

A. None whatever.

Q. Now, you stated that in the matter of these La Raut claims that somebody else looked after them,—who did you refer to?

A. Which claims have you in mind?

Q. I mean the other claims on Brumbaugh?

A. Mr. John Kelly looked after the Brumbaugh claims,—the Dunbar, the Roche claim, and the Jordon claim.

Q. You never had anything to do with those claims yourself personally?

A. Nothing whatever.

(Witness excused.)

337 H. A. DUNBAR is called as a witness for the defendant, and being first duly sworn testifies as follows:

Direct examination.

Questions by A. H. TANNER:

Q. State your name, age, residence and occupation?

A. H. A. Dunbar; age thirty-four; secretary of the Booth Kelly Lumber Co., residence Eugene, Oregon.

Q. How long have you been in the employ of the Booth Kelly Lumber Company?

A. Since September the 9th, 1899.

Q. In what capacity?

A. Bookkeeper.

Q. Have you had any official position in the company?

A. I have for the last year,—secretary and treasurer.

Q. Prior to that time did you have?

A. No, no official position,—I was considered the cashier of the company.

Q. Your principal duties then, and at all times has been that of bookkeeper?

A. Bookkeeper and cashier.

Q. Do you know Mr. Thomas Roche?

A. Yes sir.

Q. Has he been in the employ of the company during most of that time?

A. Yes. I cannot say for sure just when he came to the company, but for the last ten years.

338 Q. Has he been in the same office with you?

A. Yes sir.

Q. You may state the circumstances under which you took up a timber claim in the Brumbaugh Creek country which has been referred to in the testimony in this case, and why you took it up, and all about it.

A. Well, I had had in mind for some time the proposition of using my timber rights. I mentioned it to Mr. John Kelly some time before that, and at different times, that I would like to take up a timber claim if he found one he would advise me of it, and he did, and I took up the claim and filed on it, and made proof.

Q. Did you go and look at the claim before you filed on it?

A. I did.

Q. Who did you go with?

A. With Mr. D. H. Brumbaugh, Ethel and Lucy La Raut, and also with Mr. Robinson.

Q. You all went out together to look at the claims, were the girls going to take claims also?

A. That was my understanding that they were.

Q. They went out with you for the purpose of selecting claims did they?

A. Yes sir.

Q. And then did you go to Roseburg, and file on your claim and subsequently prove up on your claim?

A. Yes sir.

Q. Who went with you to Roseburg to prove up on your
339 claim?

A. D. H. Brumbaugh and Robinson, I think. I think they were my witnesses.

Q. Did the girls go?

A. They were there at the time. I was one of their witnesses.

Q. Now, at the time that you filed on your claim, did you take it for your own benefit?

A. I did.

Q. For the purpose of making out of it, what you could for yourself?

A. Yes sir.

Q. Did you take the claim for the purpose of selling it when you saw fit for what you could get out of it?

A. I took it for my own personal benefit.

Q. Did you prior to filing on your claim, promise anybody to sell it to them, or deed it to them?

A. I did not.

Q. Had you made any contract or signed any paper or made any arrangement, either verbally or otherwise before you took up your claims, or before you proved up on it to sell it to anybody else?

A. I had not.

Q. Or to sell any interest in it, or the timber on it?

A. No sir.

Q. Was there any other person, firm or corporation interested with you? In any way in the timber on this claim or in the claim?

A. No sir.

340 Q. What arrangement did you have if any with the Booth-Kelly Lumber Company, or Mr. Kelly as to advances to pay for the land and pay the expenses?

A. I was permitted to charge the amount to my account.

Q. And did you do so?

A. I did.

Q. What was the practice or custom with the company at that time with regard to your drawing on your account or over-drawing your account at times?

A. My account was quite often over-drawn at times. The way the account was kept, was at the end of each month, my salary was credited to my account, and I charged against it such money as I drew out, and I was permitted at different times to overdraw my account.

Q. Did that apply to other officers of the company? The other employes in the office of the company?

A. Yes, the same rule applied to all employes of the company.

Q. Did the same condition apply with reference to Mr. Roche's account?

A. Yes sir.

Q. Now, when did you sell that claim to the company, the Booth-Kelly Lumber Company, if you did sell it to them?

A. It was some time in November, 1904, I do not remember just the date.

341 Q. Did you make a deed to the company about that time?

A. The deed was some time in November, yes.

Q. How much did you get for that claim?

A. Thirteen hundred dollars.

Q. How was that paid to you?

A. Well, I took credit for the amount and just drew it out as I needed the money.

Q. Did that include the expense money and costs of the land that had been advanced, and which you had charged yourself with?

A. I charged myself with the amount when I drew it out.

Q. Did this thirteen hundred include what you had paid out for the land?

A. Well, I cannot say exactly, that it included all, because of the expenses — were charged to this group of Brumbaugh land claims.

Q. Now at the time that Miss Ethel La Raut and Lucy La Raut went to Roseburg, you say that you went along with them?

A. Yes, sir.

Q. State under whose directions you did that if you did it under the directions of any one.

A. Well, I was instructed I think by Mr. Booth, who was manager at that time, and I went as one of their witnesses, I think the record will show that I was a witness for them.

Q. Were you instructed to advise and assist them in making their filing and proof?

A. I assisted them, yes sir.

342 Q. Did you take the expense money, or who had the expense money at that time?

A. I had it.

Q. How was that furnished to you, how did you get that?

A. Well, I simply took it,—I have authority to take the money for the expenses, and I took it.

Q. Do you remember what shape it was in, whether in the shape of a draft or check, or money when the final proof was made?

A. It was in the form of a draft.

Q. Did you open this account here, the transcript of which is introduced in evidence marked Government's Exhibit "K" in relation to these lands?

A. Yes sir.

Q. You may state how you come to open that account, and why it was opened in the manner in which it is in the books of the company?

A. Mr. Booth wanted me to keep the account separate from any other man's account.

Q. Was it entered in a separate account?

A. It was.

Q. Separate from the other accounts of the company?

A. Yes sir.

Q. Did you make these entries of the expenses that are charged up there?

A. I cannot say that I made all of them, I think I did, I had charge of the money paid out.

Q. Were you instructed to keep an itemized account of it?

343 A. I was instructed to keep the account so that they would know what the expenses were on these claims.

Q. What the expenses were, and what it was paid out for, and so on?

A. Yes sir.

Q. Do you recall Mr. Dunbar, any conversation with Mr. Booth, the manager of the company, about the time these claims were filed upon as to those amounts being charged to him, or who was to be responsible for them,—in regard to the La Raut claims?

A. Mr. Booth told me that he was to be responsible for the claims, and wanted me to keep the account separate.

Q. That was the reason that they were entered up in this way?

A. That was the reason.

Q. Do you know about these subsequent payments that were made to Ethel La Raut and Lucy La Raut and Stephen A. La Raut, do you know anything about that?

A. Nothing further than that I made the payments.

Q. Upon whose instructions?

A. Well it depends upon what payments you refer to, and the year. It would be under the instructions of the manager whoever it was at the time the payments were made.

Q. You only drew checks under instructions of the manager in charge of the business?

344 A. Well, from the manager or Mr. John Kelly, he was over me and he had authority.

Q. Somebody in authority above you?

A. Yes sir.

Q. In your associations with Ethel La Raut and Lucy La Raut,

and in going up and examining this land, and going to Roseburg and filing on it, and making final proof, etc., was there ever any conversation or statement to indicate that they were taking this land in any other way than for their own benefit?

A. No sir.

Q. Was anything ever said that they were taking them for the Booth-Kelly Lumber Company in consideration of one hundred dollars, or anything of that kind?

A. No sir.

Cross-examination.

Questions by Mr. JOHN McCOURT:

Q. How did you happen to pay them one hundred dollars apiece on July 31st, 1902?

A. It was paid over to them by authority of some one, I do not remember who.

Q. You do not remember who told you?

A. I presume it was the manager, it would be somebody in authority.

Q. Did you pay yourself one hundred dollars on your claim at that time?

A. No sir.

Q. Did you have any transaction with regard to your claim at that time with the company?

345 A. I charged myself with four hundred dollars at the time I proved up.

Q. Did you credit yourself with anything?

A. I did.

Q. How much?

A. Five hundred dollars.

Q. Why did you credit yourself with five hundred dollars?

A. Because I had some expenses, and I was making a loan from the company.

Q. What did you take one hundred more than you used up for?

A. Simply to off-set my expenses and the amount is there charged.

Q. You got one hundred dollars at that time more than your expenses?

A. I took credit for five hundred dollars.

Q. You got five hundred dollars over and above your expenses?

A. My account shows what I got.

Q. You got one hundred dollars?

A. Yes.

Q. You gave a deed at that time?

A. No sir.

Q. Did not you give a deed to the Booth-Kelly Lumber Company?

A. No sir.

Q. You did not give a deed at the same time as these other people?

A. No sir.

Q. But you got one hundred dollars?

346 A. Yes.

Q. What authority did you have for taking one hundred dollars more than the land cost you?

A. From somebody who had authority.

Q. Who gave you authority to take that money?

A. I presume Mr. John Kelly.

Q. What did he give you the hundred dollars for?

A. To off-set the charge that I had made against my account.

Q. Yes, you were off-setting it by one hundred dollars over what you had charged, what I want to know is about this hundred dollars?

A. Well, it was my own account, and I had my own arrangement.

Q. You borrowed one hundred dollars?

A. Yes, if you want to consider it that way.

Q. What security did you give?

A. I gave no security.

Q. Why did not you charge it to your account, and not charge it to the land claim?

A. I did charge four hundred dollars to my account, and I charged five hundred dollars to stumpage account.

Q. The five hundred dollars you were paid?

A. Yes.

Q. You credited stumpage?

A. I charged stumpage and credited my own account.

Q. And you made one hundred dollars out of the transaction?

347 A. Yes. This five hundred dollars was simply a loan on the land.

Q. What did you give the company for that loan?

A. Nothing.

Q. You did not deed them the land?

A. No.

Q. They had no security?

A. No.

Q. Not until 1904 when you made the deed?

A. No.

Q. You carried it to the stumpage account in 1902?

A. Yes.

Q. Why did you carry it into the stumpage account?

A. Simply because it was a loan on the land.

Q. You did not turn the land over at that time?

A. No, I did not, that was in 1904.

Q. What did you get it into the stumpage account for?

A. I have answered that question three or four times, it was a loan on the land.

Q. Did you charge it into the stumpage account you over-drew your account fifty dollars?

A. No, sir. The charge is in my account.

Q. The charge is in your account without reference to the land.

A. Yes sir.

Q. You say this hundred dollars had no relation to the land?

A. It was the loan of five hundred dollars that I got, and I

348 took credit on my account for \$500.00, that was a loan, and I charged my account the same as I always did before, and have always done since.

Q. But what I am getting at is, why did that transaction of one hundred dollars require you to charge the stumpage account of the company five hundred dollars?

A. There was no one hundred dollars mentioned in my account at all.

Q. But there was one hundred dollars?

A. As I say, it was a loan.

Q. It was a loan was it, what for?

A. Five hundred dollars was the amount.

Q. What for?

A. I took it on this land.

Q. Now, did not you charge stumpage account with the entire expense of those Brumbaugh claims?

A. Yes.

Q. You never entered that in your account at all did you?

A. No sir.

Q. Never made any recognition of it in your account?

A. No sir.

Q. So that part of it was not a loan, was it?

A. No sir, that was charged in with the other,—there was these eight claims in a group, and the expenses were where they could be gotten at.

Q. How could the expenses be gotten at in your stumpage account?

A. I think it shows in the Brumbaugh land claims it shows what the expenses were all through.

349 Q. When did you charge that up to your account?

A. When did I?

Q. Yes.

A. It was not charged to my account.

Q. Never went into your account at all?

A. No.

Q. All you are charged in your account with is four hundred dollars? Which was the purchase price of the land?

A. I am charged with four hundred dollars, and credited with five hundred dollars, and I have taken that out along as I needed it.

Q. When did you next make a charge to your account on this Brumbaugh land claim?

A. That I cannot say, as I said, I charged my account as I drew the money.

Q. Did not you take credit to your account for eight hundred dollars?

A. Yes sir.

Q. And you described the land in it?

A. Yes sir.

Q. And you entered that in your account?

A. When the final payment was made.

Q. In December 1904 you got eight hundred dollars on the land?

A. And gave a deed.

Q. Is it not a fact, that you had given a deed in July 1902, and that that deed was destroyed some time about December, 1904, and you made this new deed after the patent was issued?

350 • A. No sir.

Q. It was not?

A. No sir.

Q. Now what did Booth tell you about these girls getting money for their claims?

A. When he asked me to go to Roseburg and pay the expenses?

Q. He didn't tell you anything about loaning money to help them along?

A. The understanding was that he wanted me to keep the account separate, and that is the reason that the accounts were kept separate.

Q. Did he tell you that he was going to stand good for Jordon's claim too?

A. No sir.

Q. Was he standing good for that?

A. No sir.

Q. How did it come that you kept this separate just the same as you did the others?

A. I did not keep his separate.

Q. And Roche was the same as yours?

A. The same as mine.

Q. Now, when you were keeping these separate, why did not you charge Lucy and Ethel La Raut with the money that you had paid out for their land?

A. Because the expenses were kept in a separate account. You have the account there.

Q. Yes, but suppose you had been asked what there was against the Lucy La Raut account, what would you do?

A. I would turn to the account of the Brumbaugh land
351 claims for the expenses and her account for the money advanced.

Q. Suppose you had had heart-failure, and a new bookkeeper had come, how would he know anything about going to the Brumbaugh land claims?

A. The items are in the book, I assume he would.

Q. Take the Lucy La Raut account, where is the items in your ledger account showing that Brumbaugh account?

A. There is nothing in that account.

Q. How would anybody know that that account had anything to do with the Brumbaugh land claim?

A. By looking at the stumpage account, where all expenses were kept on the Brumbaugh land claims.

Q. I am assuming that you had had heartfailure and had died, what is there in the records of the company, to show that the Lucy La Raut account had anything to do with the Brumbaugh land claims?

A. It was in the Brumbaugh land claim account.

Q. How would any one ever know that it was in the Brumbaugh land account?

A. It was in the books. I was not the only one that knew.

Q. You were supposed to keep a set of books that anybody could go to, and find out about it without having to ask anybody?

A. I think so.

Q. This account of Lucy La Raut does not have anything to do with the account of the Brumbaugh land claim?

A. The expenses of those claims were kept in this one account.

Q. But there was not any part of it charged to Lucy La Raut, or Ethel La Raut, or Stephen La Raut?

A. I think that shows all.

Q. Your book does not show the account.

A. It shows what there is.

Q. Yet, you had been told to keep them separate,—to keep the Lucy La Raut and the Ethel La Raut account separate?

A. Any bookkeeper that understood would know.

Q. You say these Brumbaugh land claims were kept separate from the other claims?

A. Yes.

Q. How?

A. Because the different parties were charged with the money advanced on these claims.

Q. And the other claims that the company got, that was not done?

A. No, it was not done, it was charged to the regular stumpage account.

Q. I wish you would bring me your book, I want to see what the difference it is, how soon can you get that book, so that I can examine your stumpage account?

A. I can get the book for you if you want it, it will take me some time to do it.

Q. How long will it take you to get it here?

A. I do not know, I would have to go to Eugene and get it.

Q. Couldn't you telegraph, or telephone and get it?

A. I presume it might be done.

(It was agreed that the witness should go to Eugene and get the book requested by counsel.)

Q. When you went down there to the land office to make proof, did you take the Jordan, Roche and Brumbaugh draft in your pocket?

A. No sir.

Q. You did not do that?

A. No sir.

Q. You did carry yours and the La Raut Girls'?

A. Yes.

Q. Who paid for Stephen and Alice La Raut?

A. I do not know.

Q. You did not go down with them?

A. No.

Q. Do you remember the execution of the deeds and the delivery of the same by the La Raut girls, and Stephen and Alice La Raut?

A. I do not.

Q. You do not recall that?

A. No.

Q. Do you remember anything about the Jordon deed?

A. No I do not remember that.

Q. Did you and Roche make a deed at the same time?

A. I think we did, I cannot say for sure, I imagine we did.

Q. I would like to know why it was that you took the Roche
354 claim into the stampage account on July 31st, 1902?

A. For the same reason that my own was taken.

Q. Why?

A. Because he was an employe of the company.

Q. Then did he get a hundred dollars?

A. He got a loan of five hundred dollars.

Q. How long after he made proof was it that he deeded this land?

A. Well, I cannot say, it was shortly after.

Q. The money had all been advanced long before?

A. It was yes.

Q. And you were charged with four hundred dollars and so was
Roche?

A. Yes.

Q. But you gave yourself credit for five hundred dollars, and you got one hundred dollars more than you paid out?

A. That was the agreement that we should have a loan of five hundred dollars.

Q. Who did you have that agreement with?

A. Mr. Kelly was one that I had the agreement with.

Q. What was this hundred dollars for?

A. You refer to a hundred dollars, there was no hundred dollars, it was simply a loan.

Q. You consider the loan, but you charge yourself with four hundred dollars for the purchase price of the land to the land office?

A. Yes sir it shows there.

Q. And you did not charge yourself at all, and never did
355 charge yourself with the eight dollars which you was paid by the lumber company? for publishing your advertisement?

A. No.

Q. You never were charged with that?

A. Except as I have explained it there.

Q. You never were charged with seventy-two cents, your fare to
Saginaw?

A. No.

Q. Nor with your supper or your breakfast?

A. No sir.

Q. And your dinner on that trip?

A. No.

Q. Nor with your fare back to Eugene?

A. No.

Q. Nor with your fare and expenses going down to Roseburg, and making proof were you?

A. No.

Q. None of those items were ever charged to your account at all?

A. No, they show up in the Brumbaugh land claim account.

Q. They never were charged to your account at all?

A. No.

Q. You never did have to account for those items at all?

A. Nothing further than that you will find them in the Brumbaugh land claim account.

Q. You never did have to account for the ten dollars and 356 fifty cents fee that was paid to the land office?

A. No.

Q. Nor any other expense in regard to the land?

A. Just in that account.

Q. As a matter of fact, your land cost more than four hundred dollars was a little excess in that?

A. I do not remember.

Q. Now then, when you come to your books about this Roche claim, you never made a charge to his account of the thirty or forty dollars that the company had advanced for expenses and fees?

A. No sir.

Q. But he did get a credit of one hundred dollars in excess of the amount charged to him did not he?

A. He got credit for the loan which he got of five hundred dollars.

Q. What was he taking a loan of five hundred dollars when the outlay was four hundred and thirty-four dollars?

A. Simply because no agreement had been made, for what he should get for his land.

Q. Yet, you were going to sell it at that time?

A. There was no agreement.

Q. You intended that the company should have the land?

A. The company would be given the first preference.

Q. They took their preference by carrying the land on their books as their own?

A. No, they did not.

357 Q. They did not?

A. No, the deeds were not made out.

Q. But the books showed it as company land?

A. The books showed that the company had advanced so much on the land.

Q. The books showed that the company owned the land, and it was carried to stumpage accounts the same as any land that they owned?

A. Yes.

Q. What was the stumpage account made up of?

A. Timber lands.

Q. Just an account of the land owned by the company?

A. Well, not that they owned, quite often money would be advanced on land.

Q. Give us another case where you make advances on land out-

side of those that you carried to stumpage account before you had any deed or mortgage or other paper?

A. I cannot think of any just now, I am quite sure there were.

Q. You recall, do you not, that the government was very busy in making the so-called land fraud investigations about the time your account was credited with this eight hundred dollars?

A. I know the land fraud investigation was being made. I do not remember the date.

Q. You never paid any taxes on this land? You did not have it cruised?

A. Nothing more than when I was over them.

Q. You did not have them cruised after that?

358 A. No sir.

Q. The company attended to all that?

A. I do not remember.

Q. They had had that cruised before you took it up at all?

A. I do not know.

Q. Did not Brumbaugh tell you that he had cruised them?

A. Yes.

Q. He knew that he was the company cruiser?

A. He was a cruiser.

Q. Did not he tell you what the land cruised?

A. He gave me an idea.

Q. You had the custody of the records and correspondence of the company had you not?

A. No sir.

Q. You had the record of the cruises that were sent into the company?

A. Not always.

Q. Nearly always?

A. No, I cannot say that I did.

Q. Did not you have the custody of them?

A. No.

Q. Didn't you file them?

A. No sir.

Q. Who attended to that?

A. Well, I think Mr. Kelly had more to do with that than any one else at that time.

Q. Who was manager of the company in September 1907?

359 A. George Kelly I think, he was acting as manager.

Q. Any payments that were made in 1907 were made through Mr. Kelly's authority?

A. Yes.

Q. Do you remember paying Ethel La Raut and Lucy La Raut twenty-five dollars each that year?

A. I do not remember that I did. I presume that I did.

Q. How did it come that you did not charge them with that?

A. Their account had been ruled off.

Q. Why were they ruled off when you knew they were not closed?

A. I did not know anything about that.

Q. You did not know that Mr. Booth was carrying them along

there, and that the company was carrying them along there as their own lands?

A. Their accounts were closed up and charged into stumpage accounts.

Q. How big an account is that stumpage account of yours.

A. What do you mean, the total amount of the stumpage account in dollars and cents?

A. No, in acres.

A. I cannot say, I do not know.

Q. Hundred and fifty thousand acres?

A. Somewhere close to that.

Q. You could keep the Lucy and Ethel La Raut accounts, a little account of three or four hundred dollars, by running it into that large account, better than you could keep it in their individual names?

360 A. It was easy to determine as to the amount.

Q. Now, when you made a charge in 1907, there on lots one, two, seven and eight, and lots nine, ten, fifteen and sixteen, section twenty-eight, township 21 south of range 2 west, of fifty dollars, and suppose I would come along and wanted to see what Lucy La Raut's account amounted to how would I know that that was the Lucy La Raut and Ethel La Raut claims?

A. There is nothing, the name was not mentioned, but the description here shows whose land it was.

Q. You do not have it entered up against the individual?

A. It is simply in the stumpage account.

Q. Would you consider that way of keeping books, there without any index to it, or anything to indicate the date when it was paid, an easier way to keep an account in the name of Lucy La Raut, and by keeping it in her own name properly indexed?

A. Well, her account had been ruled off.

Q. It was not closed, why was it ruled off?

A. It was balanced.

Q. You rule an account off every time it is balanced?

A. Sure.

Q. You do not reopen it any more until another transaction occurs in it? Then you reopen it, why did not you reopen it when these transactions occurred?

A. I cannot say as to that.

361 Q. Is not the reason that you did not reopen it because this transaction had nothing to do with Lucy La Raut or Ethel La Raut, and that the land was owned by the company?

A. I was evidently instructed by Mr. Kelly to put that account in that way.

Q. You supposed that that was just an expense growing out of the land?

A. No, I knew nothing about it.

Q. You always considered that the company owned the land?

A. I did not know.

Q. You so understood it when you carried it into the stumpage account?

A. I have told you.

Q. You never would have carried this land into that stumpage account, if you had not thought that it belonged to the company?

A. If I had been instructed to do so, I would have entered it.

Q. But you were not instructed every time you made an entry in your book were you?

A. It is owing altogether on the account.

Q. You do not remember of receiving any instructions to enter those in the stumpage account?

A. I would not have entered it had I not received instructions.

Q. Why?

A. Because I had no authority to do it.

Q. When the company gets a deed to land and you pay out money on account of it does John Kelly or George Kelly or Booth
362 have to run around and tell you how to enter it on the books?

A. They give me authority to pay out money before I do so.

Q. When you pay out money for land you enter it in the stumpage account when the title comes to the company?

A. Yes.

Q. And not otherwise?

A. How do you mean, otherwise?

Q. Unless the land does come to the company?

A. Well, I do not know always when the company receives the title.

Q. When you do not receive the title you charge it to what account?

A. If Mr. Dixon told me to charge it to stumpage account, I would do so, he was manager.

Q. Regardless of whether that was proper in relation to the rest of your accounts?

A. He would give me some directions how it was to be done.

Q. Well it must keep those managers up there pretty busy directing you how to make entries in your book?

A. They are not making entries every day in the stumpage account.

Q. You were about this time, were you?

A. No.

Q. Those years?

A. No sir.

Q. Who instructed you to enter that land in the stumpage account of the company?

363 A. As I said before, Mr. Kelly was manager and he told me that I could take credit for \$500.00.

Q. Kelly told you to enter that in the stumpage account?

A. He evidently did, or I would not have done it.

Q. Don't you know that John Kelly never told you where to make a single entry in your books? He is not a bookkeeper?

A. I think you are mistaken about Kelly.

Q. He did tell you then where to enter it?

A. Naturally it would go into that account.

Q. It would naturally go into that account because the land became the land of the company?

A. No.

Q. Who told you to enter Roche's land in the stumpage account?

A. John Kelly.

Q. Who told you to pay him \$100.00? You gave him credit for \$100.00 more than he paid out?

A. He just took credit the same as I did.

Q. You closed out the account then as to those matters?

A. No, Mr. Roche's and my account are not closed.

Q. Because you continued on with other transactions?

A. Yes.

Redirect examination.

Questions by Mr. A. H. TANNER:

364 Q. Now, this amount of \$500.00 that you have referred to as a loan, was that an estimated amount to cover the cost of the land, expenses and etc.?

A. No, sir, that was simply a loan on the land.

Q. Do you recall what the expenses were outside of the four hundred dollars, or whatever was paid to the government for the land?

A. I cannot say.

Q. Now, you have referred to a stumpage account other than this stumpage account that is here in evidence connected with these Brumbaugh Land Claims,—were these items or any of them in this account entered in that other stumpage account, than the one that appears here?

A. No sir.

Q. And this stumpage account as I understand you, is a separate account that was kept of these particular claims?

A. These accounts were kept separate, but when they received credit they were charged in that stumpage account.

Q. What stumpage account,—this stumpage account that is here?

A. They were charged in the general stumpage account.

Q. Why was that done that way?

A. Well, it was July, these accounts were closed in July, 1902.

Q. Had this payment of \$800.00 that is charged here in this account anything to do with the land fraud investigation referred to?

A. None whatever.

365 Q. At the time you opened this account referred to and which is here in evidence as an exhibit, did you have any idea of any investigation of the so-called land frauds at that time?

A. No sir.

Q. You simply entered the account in a way that would be intelligible to you, and the other officers of the company?

A. Yes.

Q. Now, is it not a fact, that in all other purchases of land except these eight claims, no account was kept with the individuals, but

the amount paid was credited to cash, and charged to stumpage account?

A. Yes sir, it was either cash, or the bank. It was owing to how the amount was paid.

Q. No account was kept with the individuals from whom the purchase was made at all, was it?

A. No sir.

Q. Is it not a fact, that this stumpage account that you have referred to, includes expenses for cruising and all other expenses,—taxes and so?

A. No, not taxes.

Q. Not taxes, but other expenses.

A. Cruising, that is charged to cruising.

Recross-examination.

Questions by Mr. JOHN McCOURT:

Q. Just show me where any expense for cruising or other expenses connected with those claims was charged to Stephen, Alice La Raut, Edward Jordon, Roche, yourself or Brumbaugh?

A. There is nothing in that.

366 Q. Nothing to show that,—it was never charged against either of them?

A. I do not know what the claims cruised.

Q. You did know that you went to Roseburg and spent twenty or thirty dollars?

A. Yes.

Q. Was that charged against you?

A. No, that was charged in that other account.

Q. It had nothing to do with the account against you?

A. It was included in this group.

Q. Was it included in the general stumpage account?

A. Yes.

Q. The expenses of the company on acquiring land?

A. It was charged to this account and afterwards transferred into the stumpage account.

A. Show where it was charged to this account that you speak of.

A. This Brumbaugh Land Group.

Q. Which did not have anything to do with you, or Lucy La Raut, or any of the other individuals?

A. It was not charged to their account.

Q. It was general expenses, charged to the expense account of the company, the same as any other expenses incurred by them?

A. In a different way.

Q. It was charged against the Brumbaugh land claims, the same as the expenses against the Saginaw Mill, or some other bill, or store, was charged against the Saginaw Mill or Store?

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A. Yes sir.

Q. And went into your general expenses account? When you transferred it?

A. Yes.

Q. The account you took it to, was the Brumbaugh land claim account, and not Stephen La Raut, or Alice La Raut, or Ethel La Raut, or Lucy La Raut?

A. It was afterwards charged into the stumpage.

Q. It was never charged against any of those people?

A. No.

Q. It was charged to the general expenses of the company in relation to acquiring those lands on Brumbaugh Creek?

A. No sir, I was requested to keep them separate.

Q. Keep what separate?

A. The expenses.

Q. Where did you keep them separate?

A. In the Brumbaugh Land Claim account.

Q. You were also told to keep the Saginaw Mill or Store expenses as shown in this account?

A. Yes.

Q. And you kept those expenses in relation to the Brumbaugh Land Claims just as you kept the expenses of the Saginaw Mill, and charged them all up generally?

A. The Saginaw plant expenses were charged to that plant.

Q. And the expenses of the Brumbaugh Land Claim were charged to the Brumbaugh Land Claim, and not to the individuals?

A. It shows that it was.

Q. It never was charged to the individuals?

A. No.

Q. And you opened up that account in March 1902, that Brumbaugh Land account?

A. Yes.

Q. Before the claim had ever been proved up on?

A. Just after they had been filed.

Q. After they had been filed?

A. Yes.

Q. After there had been some expenses incurred in relation to them?

A. Yes sir.

Q. And you carried them right along there from that time on?

A. Yes.

Q. Until you closed that out on July 31st?

A. No, December 31st.

Q. July 31st, when they were charged to stumpage generally?

A. Yes.

Q. The last entry in the account shows July 31st, 1902?

A. Yes.

Q. The date that each of you got \$100.00?

A. Yes.

Q. Now then, if the account of Ethel and Lucy La Raut, and these other parties was to be kept separately, why did not you charge into their several accounts these expenses that were chargeable to their respective claims?

A. I cannot say.

Q. If you had been told to keep them separate, so you could determine how much the company had been out on each one of the claims, that would be the natural way to do it would not it?

A. You can tell by taking the two accounts with the individuals and the Brumbaugh Land account.

Q. You have been over that before?

A. Yes.

Q. Suppose a man came into the Booth-Kelly Lumber Company with a new bookkeeper and wanted to know what the Ethel La Raut account was, it would show \$400 paid on May the 8th, and on July 31st, \$100, and a credit of \$500 on July 31st?

A. That is the way the account shows.

Q. That would be the end of that, and all he would see?

A. On the face of it, yes.

Q. There is no reference to any Brumbaugh Land Claim in there?

A. It shows that the account is there,—the Brumbaugh Land Account.

Q. Look at that Ethel La Raut account.

A. It does not show in that individual account, but the Brumbaugh Land Account was in our books the same as the individual account.

Redirect examination.

Questions by Mr. A. H. TANNER:

370 Q. Is it not a fact Mr. Dunbar, that there are many charges and items in this stumpage account where the company does not come into possession of the land?

A. I do not just understand the question.

Q. Well, for instance,—suppose the company, was looking at a tract of land with a view of buying it, and incurred expenses in cruising, and did not buy it finally,—how would the expenses be entered in that case?

A. We kept what we called a cruising account, and all of the expenses of cruising would be charged to that account, and charged into the stumpage account at the end of the year.

Q. It all goes into the stumpage account?

A. It goes into the stumpage account eventually.

Q. That would be so whether the company got the land or not?

A. Yes sir.

Q. How long has that been the custom of keeping the accounts in that way, and charging it finally into the stumpage account?

A. It has always been since I have been with the company.

Q. Is it not a fact now Mr. Dunbar that those items formerly, I do not know what your late practice has been, but formerly, they would be charged directly into the stumpage account?

A. Do you mean the early transfer to the company?

371 Q. At this time in question along in 1902 is it not a fact that expenses of that kind would be charged into the stumpage account directly?

A. Do you mean after they kept a cruising account?

Q. Yes.

A. I cannot answer that.

Q. Do you remember about that?

A. I do not remember.

Q. How is it about the purchase of land, what is the fact about that,—where would those items be entered in the first instance?

A. You mean land that we bought,—timber land?

Q. Yes.

A. To stumpage.

Q. How about taxes,—was there a separate account kept of taxes?

A. Yes sir.

Q. What is this stumpage supposed to include?

A. It includes money paid for timber lands, and cruising expenses.

Q. Does it include any other expenses attending the acquisition of the land?

A. Any expenses pertaining to the land.

Further cross-examination.

Questions by Mr. JOHN McCOURT:

Q. I direct your attention Mr. Dunbar to this stumpage account again, which has been introduced in evidence here, and ask you in what sort of a book you kept that,—what do you call the book?

A. Kept it in a ledger.

Q. Now this part of the account then as shown here what
372 are those sums of money,—this \$500 and this charge of \$301.03 in 1902 and different charges along down, was this stumpage account charged with those?

A. Yes.

Q. What corresponding credits occur there?

A. These accounts are credited,—these different ones with the money that is shown in this ledger account.

Q. How does that stumpage account balance them?

A. The stumpage account does not balance.

Q. Does not balance?

A. No.

Q. You charged it with what?

A. Money paid out.

Q. Charged it with money paid out?

A. Yes sir.

Q. What credit does it receive?

A. Well, it receives credit for the amount of timber cut in the yearly operations.

Q. What entry is made of land that you purchase?

A. Do you mean moneys paid out for land?

Q. Yes.

A. It is charged to the stumpage account. That is the way the account is kept, but you understand, the stumpage account is never balanced as long as you have any timber lands.

Q. Does it get credit for the land that you secure?

373 A. Not unless there is a sale.

Q. Is it charged to any land that you secure?

A. Sure.

Q. That is what I am trying to get at,—I am trying to ascertain whether or not that account would get credit with the acquisition of the land, or charged with the sum of money paid in the first instance?

A. It shows,—the figures that you have there shows that it would.

Q. That is not the way it appears in your—

A. Yes it appears in our ledger just as we have it here. Stumpage is charged with that amount.

Q. So far as S. A. La Raut is concerned in the stumpage account itself, is it charged in that account?

A. Those entries are taken from the stumpage account.

Q. Now the taxes that were paid were they charged to any separate tract of land?

A. No, they were not.

Q. You never charge any taxes to these separate tracts of land involved in this suit?

A. Not that I know of.

Q. The company paid those taxes right along in a lump sum upon these lands as well as any other land owned by the company?

A. I cannot say, I did not go through the tax rolls myself.

Q. There is not any charge to these particular tracts of land for any specific sum paid for taxes?

A. Not separately.

Q. Nor otherwise?

374 A. I cannot say.

Q. There were quite a number of employes of the company who took up land in 1901,-1902,-1903, were there not?

Counsel for defendant- objects to the question as immaterial.

A. The ones which you see there.

Q. There were a lot more besides these?

A. Not that I know of.

Q. Did not the company advance money to a good many people to take up timber land there?

A. Not that I know of.

Q. There were some were there not?

A. Just those that are shown there are the only ones that I can remember of.

Q. In case the company did advance sums of money to other people to take timber claims you would keep the account in identically the same manner as you were keeping them under these persons' names?

A. They might do that, and again they might not.

Q. You do not know whether they did or not?

A. No.

Q. What is your best recollection about it,—you being the book-keeper of the company for the last ten or twelve years?

A. Well, it would be charged to them, or charged to stumpage.

Q. It would naturally be charged to the individual would not it?

375 A. Not always.

Q. Well suppose Mr. John Kelly came rushing in there some day and wanted to know how the account of Bill Jones stood,—do you mean to say that you would carry an account a way over in stumpage some where to be able to tell how the account stood?

A. I do not know whether there was any account with Bill Jones.

Q. In case Bill Jones had received some advances in connection with the timber entry, how would that be entered?

A. It might be charged to him.

Q. Of course.

A. But the account might be either way.

Further direct examination.

Questions by Mr. A. H. TANNER:

Q. There was no Bill Jones, as a matter of fact was there?

A. No.

Q. Is it not a fact that these are all the claims where the company advanced money?

A. I just told Mr. McCourt I had no remembrance of any other.

Q. If there had been any other, you would have been apt to know about it, would not you?

A. I presume I would.

(Witness excused.)

THOMAS ROCHE is called as a witness for the defendant- and being first duly sworn testifies as follows:

376 Direct examination.

(Questions by Mr. A. H. TANNER:)

Q. State your name, age and occupation.

A. Thomas Roche, age 56; residence Eugene, occupation book-keeper at present.

Q. Are you in the employ of the Booth-Kelly Lumber Company, and if so how long have you been in the employ of that company as bookkeeper?

A. Yes, about ten years.

Q. Where have your duties been performed?

A. At the general office, mostly, but I worked at each of the mills at times, but I worked mostly at the general office.

Q. In Eugene?

A. Yes.

Q. Where were you employed along about 1902, when you filed on this timber claim?

A. At Eugene.

Q. Do you recall the circumstance of your filing on this timber claim involved in this suit?

A. Yes, I got knowledge that it would be possible for me to get a claim, and I thought it would be a good thing and I took it.

Q. Did you take that claim for your own benefit?

A. Yes sir.

Q. And did you take it for the purpose of making what you could out of it for yourself?

A. Yes sir.

Q. Had you prior to filing on the claim promised to sell it to any one, or deed it to them, or anything of that kind?

377 A. No sir.

Q. Had you made any contract or signed any paper or made any agreements, either verbally or in writing whatever before you took the claim, or before you proved up on it, to sell it to anybody else at all?

A. No sir.

Q. Or to sell the timber on it?

A. No sir.

Q. Was any other person, firm or corporation interested in any way with you in the taking of this claim,—I mean to say, had you agreed in any way to sell or dispose of it to anybody else?

A. No sir.

Q. Did you inspect the land before filing on it?

A. Yes.

Q. Who did you go up to where the land is with who went with you?

A. Dan Brumbaugh and Ed. Jordan.

Q. Mr. Jordan went with you?

A. Yes sir.

Q. And went up there together and looked at the claim did you?

A. Yes sir.

Q. And then did you go to Roseburg to file on your claims?

A. Yes sir.

Q. Who went with you at that time?

A. We made the trip all at one time. Dan Brumbaugh and Ed Jordan, we went right along.

Q. You all went up there together did you?

A. Yes sir.

378 Q. And then did you go back and prove up on the land in the regular way?

A. Yes, and prove up in the regular way.

Q. Who were the witnesses on your claim?

A. I think it was Ed. Jordan and Dan Brumbaugh, that is my recollection.

Q. Had you spoken to Mr. Kelly, about getting the timber claim for you?

A. Not that I recollect of, I do not think I did.

Q. How did you come to get knowledge that you could get a timber claim?

A. Well, as near as I can remember, it was Mr. Dunbar that spoke to me about it, I presume in connection with his claim.

Q. You were working there together in the office?

A. Yes, it was he that gave me the information.

Q. Well, how did you arrange, or did you arrange for the money to pay for the lands, what arrangement did you make about it?

A. I borrowed it.

Q. From whom?

A. The Booth-Kelly Lumber Company.

Q. How was that done, just explain it?

A. I got the money and it was charged to my account.

Q. Charged up to your account?

A. Yes.

Q. State whether or not it was the practice or custom of the officers or employes of the company to have a running account with the company and to draw on it, and when they wanted to over-draw
379 their accounts at times?

A. It is the practice with a good many.

Q. Did you have such an account at that time?

A. Yes sir.

Q. Now, when was it that you sold this land, to the Booth-Kelly Lumber Company?

A. I think along towards the latter part of 1904.

Q. Did you make a deed about that time?

A. About that time, my recollection is that it was about that time, I do not remember the exact date.

Q. How much did the company pay you for that claim?

A. \$1300.00 altogether.

Q. How was that paid?

A. It was paid by giving credit to my account.

Q. And you subsequently got the money, did you, to balance the account?

A. Yes, sure I got the money?

Q. Did you take that claim Mr. Roche, in good faith and for your own benefit?

A. Yes sir.

Q. Do you remember that Mr. Edward Jordan went to Roseburg with you at that time that you went up and filed on your claim?

A. Yes he went with me.

Q. He testified in his examination in this case that in some conversation with you, or in your presence, that he said that one hundred dollars was very little to get out of it, but that it was better to get that than nothing, and that you nodded your head,—did not say anything, but nodded your head,—did you ever have such a
380 conversation as that?

A. I have no recollection of it, or any part of it.

Q. Was there any talk or understanding among you that you were to get \$100.00 out of it or anything of that kind?

A. No sir, there was no conversation like that not with me.

Q. Did you when you went up to prove up on the land carry the expense money, and the money to pay the government for the land?

A. Yes, I took the money.

Q. Did you have the money to pay for Jordan's claim?

A. Yes.

Q. And the others?

A. Yes sir.

Q. What shape was that in, was it a draft or check?

A. I cannot answer that question, because I do not know.

Q. You do not remember whether it was a draft or a check?

A. No, I do not, a great many of the details of my going to Roseburg and locating land I have entirely forgotten.

Cross-examination.

(Questions by Mr. JOHN McCOURT:)

Q. How long have you been working for the Booth-Kelly Lumber Co.?

A. About ten years.

Q. In what capacity?

A. Bookkeeper.

381 Q. What part of the company's books did you keep?

A. My particular part of the work was on the sales account.

Q. What sort of sale, lumber sales?

A. Sales of lumber.

Q. Who is your immediate boss? Under whose directions are you?

A. Well, Mr. Dunbar, he is the chief bookkeeper.

Q. You are just under him?

A. Yes.

Q. You are what they call head bookkeeper?

A. I do not know what you call it.

Q. Are you a married man?

A. Yes sir,—my wife is dead. Well, I tell — it was just about that time that my wife died, and for that reason my memory is not very clear about the details of those transactions.

Q. You deeded this land to the Booth-Kelly Co. in July 1902, did not you?

A. My recollection is that it was about 1904.

Q. Did not you make two deeds?

A. Not that I remember of.

Q. You would have remembered it if you had?

A. I would be apt to.

Q. Did not you make a deed along there about July 31st, 1902, when the company credited you with five hundred dollars, or something of that kind?

A. I do not remember of it?

Q. The company carried your land along in that stumpage account from that time?

A. I think from 1902, yes.

382 Q. What authority did the company have to carry it in their stumpage account?

A. About 1902 or about the time that that five hundred dollars was credited to my account, there was a kind of an understanding that eventually the land would revert to them.

Q. You expected to make a deed as soon as you obtained title?

A. Yes, and I gave a deed finally.

Q. But you did not make the deed at that time, which was kept off the record?

A. Not that I know of.

Q. Did they pay you one hundred dollars at that time?

A. What time? What hundred dollars?

Q. One hundred dollars over and above the four hundred dollars that you were charged with?

A. I was charged with five hundred dollars all together.

Q. Your account is charged with Five Hundred Dollars.

A. Yes.

Q. And you were credited with four hundred dollars?

A. I was charged with four hundred dollars, and I was credited with five hundred dollars, that is my recollection of it.

Q. In reference to these lands?

A. I think so.

Q. Look at the transcript of it, and see?

A. Well, that may be, but this credit of \$100, was to take up this four hundred dollars, and one hundred dollars that I got in some other way. I have been advanced money several times.

Q. You have one hundred dollars over and above what you had been cut on the claim, in fact you had not been out anything personally?

A. Why, I hope not, it would be a very poor thing if I had been out a dollar.

Q. During that period you got one hundred dollars, on your timber claim, or in relation to your timber claim?

A. I got it for some purpose, I do not know what it was.

Q. Now, you got credit for eight hundred dollars later?

A. Yes sir.

Q. Do you recall that that was about the time that there was a rather vigorous and alarming land fraud prosecution down here in Portland?

A. I do not know, I did not pay any particular attention to those things.

Q. You did not pay any particular attention, but people around you, and the Booth-Kelly Lumber Company were paying some particular attention?

A. How they may have felt, I do not know, because I had nothing to do with their business.

Q. You understand at that time, that they were somehow alarmed at some action of Mr. Heinie in relation to Mr. R. A. Booth?

A. There may have been some such a thing, but as I say, I did not pay any attention to it.

384 Q. You did not feel alarmed about it?

A. No.

Q. What was the reason that you were carrying Jordan's money along with you?

Q. I do not know. I often went with people and paid their expenses. I paid it out of one's purse, so as to keep account of it.

Q. What people was that?

A. I cannot name them, Ed. Jordan was one.

Q. You frequently went down there with crowds of people to Roseburg?

A. No, not there,—there has been times that I have been out occasionally.

Q. For the Booth-Kelly Lumber Company?

A. No, a great many years before I ever seen the Booth-Kelly Lumber Company.

Q. You never carried money that was advanced by the Booth-Kelly Lumber Company? Up there, except this time?

A. I cannot say as to that.

Q. You do not recall the reason why you carried the money instead of Jordan?

A. No, I do not know any particular reason for it.

Q. Did you pay Jordan's expenses down there? Hotel bill, railroad fare, etc.?

A. I think I paid all his expenses.

Q. Paid the fees at the land office?

A. I did.

Q. Who gave you the money to do that with?

A. I got it from the company, I do not know who gave
385 it to me.

Q. Who gave you instructions to pay all of Jordan's expenses there?

A. I think it was Mr. Dunbar.

Q. You think Mr. Dunbar told you that?

A. Yes.

Q. Did he tell you to pay Brumbaugh's expenses too?

A. I do not think I paid Brumbaugh's expenses, I do not know whether I did or not.

Q. You refer to Harry Dunbar, the bookkeeper down there for the Booth-Kelly Lumber Company?

A. Yes sir.

Q. You say that Dunbar told you about this land?

A. I think it was he that told me about it first.

Q. He had gone and filed on his timber claim?

A. I think I went before he did. It was not convenient for both of us to leave the office at the same time.

Q. Did he know about the land before you did?

A. Which land?

Q. That you filed on? Did he tell you where you could get a piece of land?

A. I do not know. It might have been Dan Brumbaugh that I hand my information from, he was the cruiser that located us.

Q. Did not John Kelly tell you about the timber claim?

A. He possibly might have said something, but it was very little, whatever John Kelly talked to me about it.

Q. Had not he talked to you about it?

386 A. I do not know as to that, but there was not much said.

Q. Brumbaugh was not there at Eugene was he?

A. I think I met Brumbaugh at Cottage Grove.

Q. You understood he was to meet you there before you left Eugene?

A. Yes sir.

Q. And you left Eugene for the purpose of going out and visiting this claim?

A. Yes.

Q. And you understood that Brumbaugh was to show it to you?

A. Yea.

Q. And John Kelly told you that he would pay the expenses?

A. Either he or Dunbar, I do not remember which of them told me. John Kelly was not in the office all the time, but Dunbar was, and whatever instructions Mr. Kelly or Mr. Booth would have to come to me it came mostly through Dunbar.

Q. Now these items of expenses that you paid out for Jordan and yourself, and the fees, etc., up there at the land office, they were not charged against you on the books of the company?

A. No, not a dollar, I do not think.

Q. Nor in general?

A. I do not know, you might call a hundred dollars. I do not know how that was carried.

Q. You did not give any concern about that?

A. No, I did not.

387 Q. You did not care what it cost those fellows to pay your expenses for getting the claim, that was their concern?

A. Yes, I cared a good deal about it.

Q. You never cared enough to find out about it.

A. I was more careful about their funds than I was about my own.

Q. You never ascertained whether it was charged against you or not?

A. I have no recollection of it.

Q. As a matter of fact you know now it was never charged against you?

A. I do not know without looking over the account.

Q. You have not looked over the account to find out before coming down here?

A. No sir.

Q. And you had nothing to do with the keeping of these items in the books that appear to have been transcribed here?

A. I have nothing to do with that.

Q. Nothing to do with the entries in the books?

A. Possibly I might have had some of it.

Q. That matter was not under your direct charge?

A. No not under my direct charge,—any entries I made I was told to make, and it might be possible that I entered all of these entries, but I do not know.

Q. You were aware of the fact that from 1902 on the Booth-Kelly Lumber Company were carrying those lands including you- timber claim in their stumpage account, as their own lands?

A. It is in the stumpage account.

Q. You knew that all the time?

388 A. Yes sir.

Q. Do you know why it was carried in the stumpage account?

A. It was a fine place to put it.

Q. A fine place to put land that belonged to the company.

A. What?

Q. It was a convenient place to put land that belonged to the company?

A. Yes.

Q. You understood at the time Mr. Roche, and Mr. John Kelly understood at the time that the company would get this land of yours?

A. I do not know sir.

Q. You thought they would?

A. No I did not give it a thought,—I thought they might after a time.

Q. What were you going to do with it?

A. I wanted to sell it.

Q. When did you first try to sell it?

A. When I knew it was mine.

Q. You knew it was yours when you got this hundred dollars on July 31st 1902?

A. Yes sir, I knew it was mine then.

Q. That was what you expected to get out of it, was not it?

A. Oh, no.

Q. Did you not tell Jordan that it was pretty hard to have to sell it for a hundred dollars—that you were throwing away your right for a hundred dollars, or words to that effect?

389 A. No.

Q. Jordan is not telling the truth about that?

A. I do not know.

Q. You did not tell Jordan that?

A. No sir.

Q. You expected that that was all you were going to get out of it when you got that hundred dollars did not you?

A. No, I did not expect anything of the kind.

Q. Why did you suppose that the company or John Kelly did not charge against your account all the expenses they were out in regard to getting that land?

A. I do not know.

Q. Did you suppose that was due to an understanding with you that you were acting for them in taking the land?

A. There was no understanding whatever between us in regard to it at all. I got the claim for my own good.

Q. They were helping you to do that?

A. As they often have done, yes sir.

Q. They were helping you, like they were helping Stephen La Raut?

A. I do not know anything about other people at all.

Q. They gave you nine hundred dollars and Stephen La Raut \$150.00?

A. I do not know how much La Raut was paid. I do not know how much any body was paid.

Q. At the time that you got this eight hundred dollars, you were bookkeeper for the company, and entered a good deal of their records and other transactions?

390

A. I was bookkeeper there as I said before, but matters pertaining to land, or deeds, or anything like that was entirely out of my regularly appointed work, because my regular work consisted in keeping up the current live accounts with customers, that was my part of the business.

Q. With the exception that when you went up on this land deal, you carried the money and paid the expenses?

A. I have carried money since that belonged to the company. And possibly I may again.

Q. What salary were you receiving at the time that you took this timber claim?

A. I do not know sir.

Q. Well, about what?

A. I should say about a hundred dollars a month, at that time.

Q. What did you get when you started in with the company?

A. I started in to work for the company at \$65 a month.

Q. That was ten years ago?

A. Yes.

Q. And you had been working about two years?

A. About a year,—I said that by guess, a hundred dollars a month, I do not know, it might have been seventy-five or eighty-five.

Q. You were raised about ten dollars a year right along, five or ten dollars a month each year?

391 A. Figure in any way you have a mind to, probably it would work out that way.

Redirect examination.

(Questions by Mr. A. H. TANNER:)

Q. Now, this matter of five hundred dollars,—counsel kept asking you about one hundred dollars,—was there any hundred dollars paid you at any time?

A. I think not. Thought about that time my account was charged with a hundred dollars.

Q. Was not that included in the five hundred dollars?

A. The five hundred dollars was to take care of that hundred dollars, and four hundred dollars. My account was badly overdrawn, so I was allowed to take credit for that much.

Q. Now you were not under any obligation or expectation to sell this land to the Booth-Kelly Lumber Company up to the time you sold it were you?

A. No sir.

Q. You continued to be the owner of the land up to the time that you did sell it to them, did not you?

A. Yes sir I considered myself so any way.

Recross-examination.

(Questions by Mr. JOHN McCURT:)

Q. Was the final receipt for this land delivered to you?

A. Yes sir.

Q. Was the patent delivered to you?

A. I think so.

Q. Who did you get the patent from?

A. I think it was mailed to me.

392 By whom?

A. By the government I suppose, or the land office—I do not know where it came from.

Q. You do not have any recollection of that?

A. No.

Q. You never had it in your possession?

A. Yes, I had it for a while.

Q. Are you sure of that, is it not a fact that some months before you deeded this land, the last time, that you deeded it in 1904, and that John Kelly got possession of that patent through Frank E. Alley of Roseburg, and that he had the receipt and sent it up there?

A. I do not know.

Q. As a matter of fact, when you got this hundred dollar credit to your account, and even before that in fact when you first came back from Roseburg, you turned over the final receipt to John Kelly?

A. Not that I know of, no sir.

Q. You would not swear that you did not, would you?

A. No sir, I do not remember.

Q. Is it not your best impression that you turned that final receipt over to John Kelly when you first came back from Roseburg?

A. I cannot tell you.

Q. That you brought Jordon's along with you, and turned them both over?

A. I cannot remember, no sir.

Q. You cannot remember anything about it?

393 A. No, I will tell you the reason why, my recollection of a great many of the details has passed away, and I trust that you will never go through what I went through in 1901.

(Witness excused.)

JOHN F. KELLY, is called as a witness for the defendant and being first duly sworn, testified as follows:

Direct examination.

(Questions by Mr. A. H. TANNER:)

Q. State your name, age, occupation, and residence?

A. John F. Kelly, 53 years old, I am farming.

Q. State what your connection was with the defendant the Booth-Kelly Lumber Company, and when it began, and when it terminated.

A. Well, I was president in the first place, and afterwards vice-president, and at the time I terminated my connection with the company, I was just a director in the company.

Q. Did you assist in the organization of the company?

A. Yes sir.

Q. And continued with it down until about what time?

A. I think five years ago.

Q. Have you any interest as a stockholder, or otherwise in the company at this time?

A. No sir. It was about five years ago that I went out as director and I have had no interest since that time.

Q. When did your interest in the company terminate?

A. Well, I think it was along perhaps in August or September, 1910.

Q. Since that time you have not had any interest in it?

394 A. None whatever.

Q. State what position you occupied in the company along in 1902 when these claims in dispute in this suit were taken up by these entrymen and entrywomen?

A. I was vice president at that time I think.

Q. What relation did you have towards the land department of the company? And in buying and selling its lands?

A. Well I did the principal part of the purchasing of the land at that time.

Q. State in a general way briefly what the plant of the company consisted of at that time?

A. The entire plant?

Q. I mean in mills,—where did you have mills?

A. We had a mill at Saginaw, one at Coburg and one at Wendling and I think one at Springfield at that time.

Q. What is the fact as to whether or not the timber land acquired by the company was mainly tributary to these mills?

A. Yes sir.

Q. And for what purpose were they acquired?

A. To back up the operations of the mills probably.

Q. Were you acquainted with Edward Jordan?

A. Yes sir.

Q. Was he an employe of the company at that time along about 1902?

A. Yes, and prior to that.

Q. How long had he been working for the company?

395 A. Up to 1902, do you mean?

Q. Yes up to the time he filed on that timber claim?

A. I presume five or six years.

Q. Where did he work and in what capacity?

A. He had worked at Saginaw, as a common laborer and as a kind of sub-foreman, and he had worked at Coburg as a yard-foreman.

Q. Do you recall the circumstance of his wanting to file on a timber claim, and if so, state the facts?

A. Yes I remember the circumstances.

Q. State the circumstances under which he filed?

A. Well, Mr. Jordan spoke to me a number of times about securing a timber claim for him,—that he had not used his rights, and was anxious to exercise it. I at that time was engaged in looking

up land purchases for the company, and in doing that, we sometimes found vacant lands and frequently parties looking after locations asked me to find them timber claims, and he among the rest. I remember that this land was in a tract up in what was called the "Brumbaugh River tract" and I told him of it, and he went up and looked at the land,—went up and examined it and filed on it.

Q. He testified here that you called up over the telephone when he was working at Coburg and asked him if he did not want to take a timber claim, or something of that kind. Do you remember that?

A. I perhaps called him on the telephone and told him that I had found a claim that he might take if he wished.

Q. What did you tell him about taking the claim if anything, what occurred about it?

396 A. I think he came over to Eugene that day, or perhaps the next day, and I met him there, and gave him the numbers of the land, and directed him to meet Brumbaugh at Cottage Grove, and he would show him the corners and take him over the land.

Q. When did you next see him?

A. I think he went direct from there to Roseburg and made his filing.

Q. From where do you mean?

A. From Cottage Grove, or from the land. He went on to Roseburg and made his filing, and I think perhaps he returned the evening of the same day, and I saw him that evening after he returned.

Q. Did you see him after he had proved up on the claim?

A. Yes I saw him frequently, every few days.

Q. Did he call at the office when he came back from filing on the land, do you remember?

A. I think when he came back from Roseburg that evening he took my horse and buggy and drove to Coburg that evening.

Q. Did you have any conversation with him at that time about his filing on the claim?

A. About his having filed?

Q. Yes.

A. I do not recollect that I did have any conversation, but perhaps I did.

Q. You understood at that time that he had filed on the claim, did you?

A. Yes sir.

397 Q. Well do you remember seeing him when he came back from proving up on the claim?

A. Yes, I remember that distinctly.

Q. What occurred at that time?

A. Well, I think he came to me when he came back and handed me the final receipt to his claims and asked me to keep it for him.

Q. Well, did you take it?

A. I think I did, yes sir.

Q. Now, Mr. Kelly, when if any time was there any arrangement made with Mr. Jordan about buying his claim?

A. That was the time that he gave me the final receipt.

Q. Had you made any agreement, or any arrangement with him prior to that time to buy the claim, or that he would take the claim for the benefit of you or the Booth-Kelly Lumber Company?

A. No sir, in fact, I explained to him that he could not do anything of the kind.

Q. You understood that it was against the law at that time to induce or hire him to take it up for you, or anything of that kind, did you?

A. Yes sir.

Q. And you explained to him you say, that you could not agree to buy it, and could not make any such agreement with him before that time?

A. Yes, because he told me that he did not have the money to make his proof and pay his expenses etc.

Q. What arrangement was made with him about furnishing him the money to pay for the land?

A. I told him that we would advance him the money to
398 pay for the land and his expenses.

Q. And how was that to be repaid?

A. When he sold his claim.

Q. He agreed to that, did he?

A. He did.

Q. When was the deed obtained from him, do you remember the date?

A. I think the deed was given in July of the same year.

Q. 1902?

A. I think so.

Q. He made the deed then before the patent issued, or do you remember about that?

A. I think he did, but I am not positive about that.

Q. But it was after the final receipt had been issued?

A. Yes.

Q. What did you pay him for the claim?

A. You mean altogether? The money that he received?

Q. Yes.

A. About five hundred dollars, or five hundred fifty dollars, including expenses and all.

Q. Was the balance of that amount over and above the expenses and cost of the land paid to him about the time that the deed was made?

A. Yes sir, I think so, I think about the same time.

Q. Do you remember the circumstances of taking the deed from him?

A. Yes sir.

Q. Just state what they were.

A. Well, he and his wife had some trouble and were about
399 to separate. I think she had gone to her folks in Grant's Pass and he was anxious to get the thing closed up and get what he could out of it before she instituted proceedings against him for divorce. He told me this and I made a trip over to where he was working. I sometimes made two or three trips a week, and one

of these trips which I made over there, Mr. Dunbar went along and we made out a deed before we went over, and Mr. Jordan signed the deed there and I paid him. I think he had bought a horse from me, and owed me and I paid him the balance. I think we agreed at that time, that the purchase price of the claim would be five hundred and fifty dollars, or one hundred dollars over and above the four hundred and fifty dollars that the claim had cost; and I paid him the balance, and this deed was sent to Grant's Pass and his wife signed it.

Q. Was that the reason for taking the deed over? That he wanted to get the claim to himself?

A. Yes sir. He told me three or four times about his having trouble with his wife, and that he would like to have the matter closed up.

Q. You testified I think, if I am not mistaken that you told Mr. Jordan, that you would advance the money to pay the expenses of the land, did you not?

A. Yes sir.

Q. When was that? When did you make that arrangement with him?

A. I think that was the time that he came over to see about where the claim was.

Q. That is when he started in to file on the claim?

400 A. Before he started in to file on the claim.

Q. And you say the arrangement was made about buying it, when he brought you back the final receipt?

A. Yes sir.

Q. Now, you know D. H. Brumbaugh?

A. Yes sir.

Q. State whether or not he was an employe of the company at that time?

A. Yes sir.

Q. How long had he been an employe of the company?

A. I think he had worked for us more or less for two or three years at that time.

Q. In what capacity?

A. Well he had done some compass work, and a little cruising in a rough way, and he had done some blasting on the creek up there, and I think he had also acted in the capacity of firewarden.

Q. State what the fact is as to whether or not he had asked you about getting a timber claim?

A. Yes sir he had.

Q. And what did you tell him?

A. I told him that if he could find a good location, he was looking around among the timber, and on his own account some,—that if he could find a good location in there, we would advance him the money to make his proof and to pay his expenses.

Q. Did he go ahead and take the claim under that arrangement?

A. Yes he did.

401 Q. Was there any understanding or agreement whatever before he proved up on the claim that he should sell it to the company, or that he was taking it for the benefit of the company, or anything of that kind?

A. No sir.

Q. Did the company hire him and agree to pay him one hundred dollars to go up there and take a claim for the company?

A. No sir.

Q. And you say that no such arrangement was made with him?

A. No sir, there was no such an arrangement made by me.

Q. When did you make the arrangement with him to buy his claim?

A. Well I do not think there was ever anything said about buying his claim for a number of months,—I do not think that I saw him for three or four months after he filed on his claim.

Q. Well, it was after the final proof was not it, that you made the arrangement to buy it?

A. Yes sir.

Q. Do you remember how much you paid out for his claim?

A. I think all together about five hundred fifty dollars, or seventy or seventy-five dollars, somewhere along there.

Q. What were those claims worth in there on the Brumbaugh Creek at that time?

A. Well, they were worth all the way from three dollars and a half to five dollars an acre.

Q. Had you been buying other land in there?

402 A. Yes sir.

Q. And have you any letters or any data to show the land bought, or the prices paid in that vicinity?

A. Yes sir, I looked over our deeds and the considerations of some sixty or seventy odd claims, which we bought in there, and in other townships, tributary to our mill, and have got the data of it.

Q. Will you produce it if you have it with you?

A. (Witness produces document.)

Q. I will ask you to state from your list or from any other data that you are able to swear to that the consideration expressed there in this list is the true and correct price paid for this land?

A. Well, I have not check- this off myself, after the list was made, I read the descriptions, and the considerations from the deeds to one of our stenographers, who prepared this, and I presume that it is correct.

Q. And the prices paid there are the true considerations?

A. Yes sir.

Q. Substantially the true considerations paid for the land?

A. Yes sir.

Q. As shown there?

A. Yes sir.

Counsel for defendant offers in evidence the document last produced by the witness, and the same is objected to by counsel for the government, for the reason that it is too remote, because the dates with a few exceptions are from two to three years prior to the time

in question, and for the further reason that it appears that the consideration mentioned was not the true criterion of the amount paid for the land or the value thereof. The document is received and filed in evidence, marked defendant's Exhibit No. L, and is in words and figures as follows, to-wit:

Defendant's Exhibit No. L.

Name.	Date.	Acreage.	Description.
Lizzie R. Forrest,	August 29, 1899.	400.....	36-15-1 W.
Estimate—15,000,000, price \$1,200.			Per average M 8c.
George McClintock,	August 12, 1901.	320.....	16-15-1 E.
Estimate—16,000,000, price \$1,920.			Per average, 12c.
B. E. Britt,	June 10, 1899.	160.....	16-15-1 E.
Estimate—\$9,400.00, price \$1,000.00.			Average per M 10½c.
W. W. Meyers,	May 3, 1902.	164.40.....	18-15-1 E.
Estimate 5,100,000, price 900.			Average per M 17½c.
B. F. Einn,	July 3, 1899.	160.....	20-15-1 E.
Estimate—3,300.00, price \$2,200.10.		480, 28-15-1E.	18,350,000.
F. M. Wheeler,	June 27, 1899.	80.....	22-12-1 E.
Estimate—\$6,600.00, price \$300.00.			Average per M 4½c.
R. M. Bingham,	Dec. 18, 1900.	80.....	22-15-1 E.
Estimate—4,400.00, price \$350.			Average per M.
L. D. Forrest un 1-3,	Mar. 24, 1899.	480.....	26-15-1 E.
Estimate—31,200.00, price \$333.33.			Average 3.
A. C. Woodcock, 1-3,	Mar. 29, 1899.	480.....	26-15-1 E.
Estimate—31,200.00, price \$333.33.			Average 3.
S. H. Friendly,	Mar-h 20, 1899.	480.....	26-15-1 E.
Estimate—31,200,000, price \$333.33.			Average 3.
Geo. A. Maines,	Apr. 22, 1899.	160.....	30-15-1 E.
Estimate—10,400.00,- price 800.			Average 7½c.
Cameron D. Maines,	Apr. 22, 1899.	160.64.....	30-15-1 E.
Estimate—6,900,000, price \$800.			Average 11½.
Wm. Eudy,	July 3, 1899.	160.....	32-15-1 E.
Estimate—12,000,000, price 550.			Average 4½.
Bessie Rickman,	June 26, 1900.	160.....	12-16-1 W.
Estimate—2,600,000, price \$600.			Average per M 23.
Dnl. Hoffman,	Apr. 15, 1899.	160.....	2-16-1 E.
Estimate—10,800,000, price \$800.00.			Average per M 7½.
Geo. H. Kelly,	Aug. 22, 1902.	160.....	4-16-1 E.
404 Estimate—9,200,000, price \$1,000.			Average per M 11.
E. Holgate,	July 9, 1900.	40.....	6-16-1 E.
Estimate—\$2,000,000, price 160.			Average per M 6½.
Franklin Decker,	May 31, 1899.	120.....	6-16-1 E.
Estimate—4,100,000, price 500.			Average per M 12.
John Davies,	Apr. 13, 1899.	160.....	6-16-1 E.
Estimate—8,000,000.		160.....	8-16-1 E.
Estimate—800,000, price \$1,575.			Average per M 18.
C. A. Hardy,	Apr. 24, 1902.	160.....	8-16-1 E.
Estimate—3,050,000, price 600.			Average per M 19½.
W. W. Meyer,	May 3, 1902.	160.....	8-16-1 E.
Estimate—6,500,000, price 900.			Average per M 14.
J. F. Kelly (O. L. Parson)	Oct. 31, 1900.	160.....	8-16-1 E.
Estimate—5,200,000, price \$1,000.			Per average M 19.

Name.	Date.	Acreage.	Description.
Jas. W. Martin, June 7, 1901.	160.		12-16-1 E.
Estimate—11,900,000, price \$500.00.		Average per M 4.	
J. F. Kelly.			
(F. Ott.) June 2, 1899.	160.		10-16-1 E.
(J. F. Kelly.)			
Estimate—8,400,000, price \$500.00.		Average per M.	
(J. J. Brown), June 2, 1899.	160.		34-16-1 E.
Estimate—12,000,000, price \$400.		Average per M 3 1-3.	
R. W. Crowell, July 22, 1902.	640.		16-16-1 E.
Estimate—39,200,000, price \$6,400.		Average per M 17.	
D. B. McBride, Apr. 18, 1899.	160.		12-16-1 E.
Estimate—11,600,000, price \$800.		Average per M 7.	
Curtis Baird, June 5, 1899.	162.		18-16-L E.
Estimate—7,600,000, price 700.		Average per M 9.	
Frank Hubbard, Feb. 20, 1899.	160.		18-16-1 E.
Estimate—3,000,000, price 600.		Average M 20.	
W. H. Martin, Apr. 10, 1899.	160.		20-16-L E.
Estimate—4,400,000, price \$750.		Average per M 17.	
Jas. C. Reed, Apr. 3, 1899.	320.		22-16-1 E.
Estimate—26,600,000, price \$1,500.		Average per M 5½.	
H. L. Sauers, Jan. 7, 1901.	160.		22-16-1 E.
Estimate—14,200,000, price \$1,000.		Average per M 7.	
A. C. Woodcock, Apr. 4, 1902.	160.		26-16-1 E.
Estimate—11,200,000, price \$750.		Average per M 6½.	
(B. E. West.)			
405 D. McBride, Mar. 19, 1902.	160.		34-16-1 E.
Estimate—7,200,000, price \$500.		Average per M 7.	
Gus Braham, Aug. 31, 1899.	160.		201601 E.
Estimate—11,800,000.	160.		24-16-1 W.
Price \$650.		Average per M 3.	
F. N. Kennedy, Sept. 1, 1899.	160.20.		30-16-1 E.
Estimate—8,800,000, price \$800.		Average per M 9.	
J. E. Hale.	40.		1-17-1 E.
A. H. Fiske.	560.		36-16-1 E.
Jennie E. Hale, No. 16.	640.		36-17-1 W.
Estimate—18,300,000, price \$4,500.00.		Average per M 8½.	
Estimate—36,100.00.			
D. M. Jones, No. 30, 190.	158.52.		2-17-1 E.
Estimate—5,400,000, price \$1,000.		Average M 18.	
Jno. Waring, July 24, 1902.	160.		14-17-1 W.
Estimate—6,800,000, price 800.		Average M 12.	
M. Emerick, Feb. 5, 1901.	160.		35-17-1 W.
Estimate—4,600,000, price 800.		Average per M 18.	
F. C. White, Nov. 27, 1900.	160.		8-17-1 E.
Estimate—7,300,000, price \$1,000.		Average per M 13½.	
J. Doyle, Sept. 27, 1899.	160.		12-17-1 E.
Estimate—6,600,000, price \$800.		Average per M 12.	
Rose Nettle, Dec. 4, 1900.	160.		20-17-1 E.
Estimate—2,950,000, price \$900.		Average per M 30½.	
Albert Dusett, Sept. 11, 1899.	160.		20-17-1 E.
Estimate—1,850,000, price \$800.		Average per M 43.	

Name.	Date.	Acreage.	Description.
C. C. Combs, Sept. 11, 1899.	160		26-17-1 E.
Estimate—11,600,000, price \$700.		Average per M 6.	
C. R. Sauers, Sept. 12, 1899.	160		28-17-1 E.
Estimate—11,300,000, price \$900.		Average per M 8.	
(Two deeds.) 160			28-17-1 E.
Estimate—12,100,000, price \$875.		Average per M 7.	
G. H. Gilman, May 16, 1902.	162.31		30-17-2 E.
Estimate—11,100,000, price \$650.		Average per M 6.	
Fred Fisk, Mar. 17, 1902.	40		3-18-1 W.
Estimate—1,850,000, price \$1,000.		Average per M 8½.	
160			10-18-1 W.
J. D. Hughes, Mar. 17, 1902.	40		3-18-1 W.
Estimate—150,000, price \$1,000.		Average per M 8½.	
160			10-18-1 W.
Estimate—10,000,000.			
406 H. A. Dunbar, Oct. 24, 1902.	160		10-18-1 W.
(J. M. Huston, Sept. 23, 1902.	160		10-18-1 W.
Estimate—1.			
Estimate—375.		Average per M 10½.	
M. O. Wilkins, No. 30, 1900.	160		16-20-2 W.
Estimate—1,450,000, price \$660.		Average per M 45½.	
J. E. Wheeler, Apr. 11, 1901.	160		34-21-2 W.
Estimate—\$8,000,000, price \$700.		Average per M 8¾.	
Eakin and Bristow, Jan. 12, 1901			120, 18-23-1 W.... 6,800,00-
			160, 24-22-2 W.... 11,150,00-
			160, 8-22-2 W.... 9,100,000
			160, 18-22-2 W.... 11,250,000
			160, 18-22-2 W.... 12,200,000
			160, 24-22-2 W.... 6,400,000
			160, 10-22-2 W.... 9,300,000
			157.06, 24-22-7 W.. 12,800,000
			160.75, 18-22-2 W.. 13,400,000
			Price \$4,500, Av. per M 5.
H. Eakin, Jan. 12, 1901.	160		30-22-2 W.
Estimate—10,850,00—, price \$500.		Average per M 4½.	
J. H. Perkins, Jan. 12, 1901.	160		20-22-2 W.
13,300,000, price \$500.		Average per M 4.	
M. Kelebeck, Jan. 11, 1901.	160		14-22-2 W.
Estimate—8,900,000, price \$800.		Average per M 9.	
F. A. Elliott, Jan. 28, 1901.	160		20-22-2 W.
Estimate—11,050,000, price 960.		Average per M 8½.	
C. H. Jones, Feb. 2, 1901.	160		18-22-2 W.
Estimate—\$13,000,000, price 800.		Average per M 6.	
G. C. Miller, Jan. 12, 1901.	156.56		12-22-3 W.
Estimate—11,900,000, \$500.		Average per M 4.	
Tillie Edwards, Dec. 22, 1905.	101.44		18-23-1 W.
Estimate—6,450,000, price 700.		Average per M 11.	
Average per M given at the nearest half cent.			
Total Estimate			724,950,000 ft.
Total Price			\$63,025.00
Average price per M.....			.086

407 Q. These prices that are stated here, were taken from the deeds were they?

A. Yes sir.

Q. And the deeds contained the true consideration paid for the land?

A. Yes sir.

Q. Now, how do these eight claims, or five claims involved in this suit compare in value with the other claims as to the amount of timber and the location?

A. They are just about the same.

Q. Taking these Brumbaugh Creek lands how do these eight claims compare with the other land on that group of claims?

A. They were not so good.

Q. That was a sort of land that had been left over?

A. Yes sir. The more desirable pieces had been taken up prior to this.

Q. Now, I notice that these deeds are made along in 1899, and 1901 and 1902, and so on,—how did the prices of land in there range as compared with what they were in these deeds along for two or three years, was there any change in the value?

A. There was very little change in timber for years in there.

Q. You may state what the value of these claims in suit was, and also the Jordan and Brumbaugh claims were at that time?

A. The value of them?

Q. Yes.

A. We paid all that they were worth at that time.

408 Q. How long had you been buying timber?

A. In that country?

Q. Yes.

A. I should say four or five years.

Q. You were familiar with the value of timber there?

A. Yes sir.

Cross-examination.

(Questions by Mr. JOHN McCURT:)

Q. What was the value of stumpage up in that country at that time—1902?

A. It was worth all the way from five to fifteen cents per thousand.

Q. What was it worth in 1904?

A. Along about the same price.

Q. How did it happen that you paid Roche and Dunbar 1300.00 dollars for their claims?

A. I presume that we wanted to pay them.

Q. You did not pay them the value of their claims?

A. Perhaps not.

Q. Did you ever buy any timber up in that country after 1902, for less than twenty cents stumpage?

A. Yes sir.

Q. Aside from these?

A. Yes sir.

Q. Whose?

A. I do not remember the particular claims, I could perhaps tell you from that list there. I do not remember all of the names or descriptions.

Q. Take the list.

A. After 1902?

409 Q. Yes and in 1902.

A. Here is one Tillie Edwards the last one, six million four hundred and fifty thousand, \$700.00.

Q. Who was Edwards?

A. She was a lady living in Roseburg.

And here is one Jan. 12, 1901, 10,000,000 feet five hundred dollars.

Q. You paid for that five hundred dollars.

A. Yes.

Q. Is that the true consideration?

A. Yes sir.

Q. E. G. Miller?

A. I do not remember the name, but whatever is there is the true consideration.

Q. How do you know that it is?

A. Because I made the transac-tion, and I know that when there was anything more than a nominal consideration put in the deed, that it was the true consideration.

Q. How about these Dunbar and Roche deeds?

A. What do you mean by that?

Q. The consideration mentioned.

A. I do not know, I am talking about these that are in that list.

Q. It was not so in these deeds?

A. I do not know what the consideration was in those deeds.

Q. If it said eight hundred dollars that was not the real consideration?

A. If it does say that, it is not the true consideration.

410 Q. It was not the universal rule to place the real amount in the consideration?

A. It was all the time that I was dealing in land matters.

Q. Did I understand you to say, that after you had phoned Jordon that he came to Eugene and went from there to Cottage Grove and looked at the land?

A. Yes sir.

Q. Did not talk to you about it before he went to see the land?

A. Yes sir.

Q. That was the time you told him that you would advance the expenses?

A. Yes sir.

Q. That is the time he says you told him you would give him one hundred dollars?

A. That is what he says.

Q. He said that you made some objection to it, and that he told him that you could get people to do it for that.

- A. I think that it what he testified to.
- Q. That was the time that he was testifying there?
- A. That is the time I presume, yes.
- Q. But all you claim you said to him was that you would advance his expenses and the purchase price of the land?
- A. That is all I agreed to do, yes sir.
- Q. You did tell him, however, that if he would go down there somewhere,—down the road, that he would meet Brumbaugh, and that Brumbaugh would show him the land?
- 411 A. He wanted me to direct him to some one who would show him the land, which I did.
- Q. You had Brumbaugh down there to show people the land?
- A. He lived down in there.
- Q. You sent all these people down there?
- A. What people?
- Q. Dunbar, Roache and the La Raut girls?
- A. I do not remember that I sent them.
- Q. And Stephen and Alice La Raut?
- A. Perhaps I did tell them, or tell some of them that Mr. Brumbaugh would show them the land, he lived down there.
- Q. Now, how long was it after he had proven up, that you gave him the hundred dollars, or said that you would give him a hundred dollars?
- A. Well I think it must have been three months or four months. I think he proved up in May, and I think I paid him the money in July.
- Q. You paid him on the basis of one hundred dollars?
- A. I paid him on the basis of five hundred dollars.
- Q. One hundred dollars over and above what you had already been out?
- A. Yes, one hundred dollars what we had been out.
- Q. You did not stop to figure up all the expenses you just simply paid him one hundred dollars?
- A. Just lumped it off.
- Q. He understood at the time, that that was all that he was going to get?
- A. I do not know what he understood,—he did not so understand it from me.
- 412 Q. Did not so understand it?
- A. No.
- Q. You did not expect to get this land for that price?
- A. I do not know, but it was all that we could afford to pay.
- Q. You knew that that was a pretty good claim?
- A. No sir, it was not considered a very good claim, on account of the small timber on it.
- Q. It cruised somewhere from nine to ten million, or more didn't it?
- A. I do not know what your estimate of it is.
- Q. My estimate is fourteen million six hundred thousand.
- A. Well that is all there is there.

Q. Nine is your estimate?

A. Yes.

Q. That is a pretty good timber claim?

A. Yes, but there are a great many that went more than that.

Q. When he got through you promised to pay him the sum of one hundred dollars?

A. Yes.

Q. Is that all it is worth?

A. Yes, that is all that it was worth at that time, all we were paying anybody.

Q. All you were paying anybody except Roche and Dunbar.

A. We set it at that figure.

Q. You are sure about that are you?

A. I am pretty sure.

413 Q. Did not you take the Brumbaugh deed to the timber?

A. I do not remember.

Q. Look at it and see if it is not about the same time?

A. I do not remember the date of the deed from Dunbar or Mr. Roche.

Q. November 14, 1904,—and Roche's deed is on the same date as Dunbar's deed and Brumbaugh's deed was December 17, following, it was made afterwards?

A. Yes it was made afterwards.

Q. Now in December Brumbaugh's timber was worth just as much as Roche's timber?

A. I do not know what the comparison or estimate was.

Q. You got one for one hundred dollars, and the other for nine hundred dollars over and above what you paid?

A. Yes sir.

Q. And the same in the Dunbar case?

A. Yes sir.

Q. Do you say that you paid Dunbar and Roche more than their claims were worth?

A. Yes sir, a little more than they were worth at that time.

Q. That is all you ever paid Jordan, was one hundred dollars?

A. That is all.

Q. You did not advance him any money since, like you have on these La Raut claims?

A. I have loaned him money since, but which he never paid.

414 Q. How much?

A. I loaned him fifty dollars at one time, which he repudiated afterwards.

Q. Was he working for you at that time?

A. No sir.

Q. He was down here somewhere on the Columbia River?

A. No sir, he was in southern Oregon at the time.

Q. He was?

A. Yes sir.

Q. That was shortly after you had met him down here in Portland when the land fraud business was being agitated.

A. No sir, I think it was before that.

Q. You sent him that money in envelope in currency?

A. No sir.

Q. Are you sure of that?

A. I do not know what shape I sent it in.

Q. Got his note for that?

A. I do not think I have, I may have it, I am not positive whether I have or not.

Q. You never demanded payment of it?

A. Yes sir, I did.

Q. Did he say that he had never given it?

A. Yes sir, he said that he would not pay it under any circumstances.

Q. Gave as an excuse for not paying it, that he had rendered services to you in regard to this timber claim?

A. Well that ain't all he said.

415 Q. What else did he say?

A. Well, he said that he had some advice from somebody not to pay,—some of his friends, I forget who.

Q. Do you remember what the friend's name was?

A. Probably some special agent.

Q. Are you sure that it was a special agent?

A. I think so.

Q. Now when Brumbaugh and Jordan say that you told them that you would give them a hundred dollars for their services in taking the timber claim and turning it over to the company, they do not tell the truth about it?

A. They are mistaken about it.

Q. You say that you told Jordon that you could not make any agreement with him?

A. Yes, he wanted to know what he was going to get.

Q. And you told him that you could not make any agreement with him?

A. Yes.

Q. Did you tell Dunbar the same thing?

A. Yes.

Q. Did you tell Brumbaugh the same thing?

A. Yes.

Q. Was that because he asked you?

A. I think he wanted to know something about it.

416 Q. You did not tell either one of them that you could get plenty of people to take up claims for one hundred dollars?

A. No sir, I may have told them that there was lots of people asking me to find locations for them.

Q. Did you tell Harry Dunbar how to make the entries of those expenses in the books?

A. No sir.

Q. You did not tell him to make any of those entries in the stumpage account?

A. No sir, I had nothing to do about making the entries.

Q. How did it come that Dunbar entered those lands up in the

stumpage account in the same way as all of the lands of the company about the time you paid these hundred dollars to each of them?

A. I do not know.

Q. Did you have anything to do with the La Raut claims?

A. No sir.

Q. None of them?

A. No sir, only I think that I may have told Mr. Dunbar, who went up with the La Raut girls, that Mr. Mrumbaugh would take them over the land.

Q. Are you a stockholder in the company at this time?

A. No sir.

Q. Were you at that time?

A. During that time, yes sir.

Q. When did the company have its annual meeting?

A. Well along about the first of February generally.

417 Q. Is a report made there by the officers of the company?

A. Yes sir.

Q. Of the lands purchased the preceding year and their holdings?

A. I think we generally reported so many acres of land purchased during the year.

Q. Is it not a fact, that ever since 1902, or following 1902 that these lands were included among the lands of the company in your annual report, and so considered?

A. I do not remember of considering them in an annual report.

Q. What mill was the Brumbaugh claims tributary to.

A. Well, they are not really tributary to any mill that was in operation right near the land, they were you might say tributary to the Saginaw mill, or the Springfield mill, we were extending a road up there.

Q. During 1902 say, what value per acre or stumpage value did the assessor of Lane County place upon that land?

A. I do not know.

Q. They assessed it?

A. Yes, but I do not remember,—for a number of years, I do not remember what it was.

Q. Was that land all assessed at the same figure or did you assess each claim separately?

A. I think all of the timber land was put in at about the same rate.

Q. You have some idea about what that is?

A. No, I have no recollection.

418 Q. Is that a rate per acre?

A. Yes.

Q. And what did the value in Lane County at that time purport to be,—or rather what percentage of the actual value did it purport to be?

A. I do not know.

Q. I have had nothing to do with the assessment of taxation for a number of years, and I do not recollect.

Redirect examination.

Questions by Mr. A. H. TANNER:

Q. Did you as a matter of fact ever tell Jordon that you would give him one hundred dollars to get a claim?

A. No sir.

Q. Did you ever have any conversation with Mr. Brumbaugh? As to when it was that he agreed to sell his claim to the company?

A. I do not get your meaning.

Q. I mean did you ever have any conversation with Brumbaugh in which he told you his understanding as to when the agreement was made,—whether it was before he filed on the land or afterwards?

A. I am sure I may be dull, but I do not understand the meaning of your question.

Q. Did you ever have any conversation with Mr. Brumbaugh in which he claimed that some special officer or agent of the government had tried to bulldoze him, or induce him to make an affidavit,—do you know now what I mean?

419 A. No.

Q. State what conversation you had?

A. Mr. Brumbaugh told me at the time that these land investigations were going on here, or about that time, that some two months before the time that he told me of it,—I think he said two months,—it was some time previous, that two special agents came to his house and inquired about some land transactions that Messrs. Jones and Cook had had up in that neighborhood, and during this inquiry they asked him about his own claims.

Q. Well what did he tell you that he told them?

A. He told me that he told them just exactly the facts about the matter which was that he had made no arrangement whatever to dispose of his claim until after he had proved up on it. He told me the name of one of the special agents,—I think his name was Watts, and that they undertook to coerce him and make him say some things that he would not say.

Q. Did he say about when that conversation was,—when was this conversation that you had with him?

A. It was something like a month after it occurred,—I do not remember what year it was, or it may have been two months, I do not know.

Q. Did the annual meeting occur in February up there, or was it in January?

A. I think it has been in both months in times past.

Q. How was it in 1902,—was it not in January at that time?

A. I think it was in January in the earlier years.

420 Re-cross examination.

Questions by Mr. JOHN McCURT:

Q. How many years ago was it that Brumbaugh gave you this story about the special agent coercing him?

A. I do not know, two, three or four years ago.

Q. Didn't he come down here to Portland about that time?

A. I do not know I never saw him in Portland.

Q. Did not you understand that he was down here before the Grand Jury,—that he was subpoenaed down here at the time the Grand Jury was in session?

A. No sir. I do not know that Mr. Brumbaugh was ever here, if he was I do not know it, he may have been.

Q. You had some other talk with Brumbaugh about this matter since that time?

A. I may have talked to him, I do not recollect.

Q. Did not you talk with him a great deal about this matter before he was a witness here?

A. I never saw Mr. Brumbaugh to speak to him, only nodded to him here in this room.

Q. You did not discuss the matter as to whether or not he should tell the truth?

A. No sir, I never spoke to Mr. Brumbaugh, except once in this room.

Q. Did not you have some conversation about him telling that the consideration for this tract of land was a little tract of
421 land down there, that he was cultivating?

A. No, sir, I do not remember any conversation about him cultivating any land belonging to me.

Q. He did not have any tract of land belonging to you down there that he could or was using about the time or shortly before the time that you got this land?

A. No, I do not remember, we had no agricultural land down there.

Q. You remember a tract of some bottom land do you remember anything about that?

A. No, I do not.

Q. He did not tell you that anybody coerced him on the stand about three weeks ago to give testimony?

A. I did not hear his testimony.

Q. You were not here at the time?

A. No sir.

Q. Were not you here when Brumbaugh took the stand?

A. No sir.

Q. You do not mean to intimate that he was coerced or intimidated?

A. The time that he was here the other day?

Q. Yes.

A. I never said anything of the kind.

Q. There is not ill-feeling between you and Brumbaugh?

A. Not that I know of.

Q. No reason why he should tell a lie against you on the stand?

A. I do not know whether there is any reason for it or
422 not, I do not know why he changed his mind about it.

Q. How is that?

A. I do not know why he changed his mind about it.

Q. I do not know either, unless he was telling the truth.

A. I do not know, each time he did not tell the truth.

Q. When he was offering testimony he was under oath?

A. I do not know, he could not have been under oath when he made his proof.

Q. Do you know of anything in this proof that contradicts what he testified to?

A. I do not know what his testimony was.

Witness excused.

GEORGE H. KELLY is called as a witness for the defendant and being first duly sworn testifies as follows:

Direct examination.

(Questions by Mr. A. H. TANNER:)

Q. State your name, age, residence, and occupation.

A. George Kelly, age 44, residence Portland, Oregon. I have no occupation at the present time.

Q. State what your relations have been towards the defendant the Booth-Kelly Lumber Company.

A. Well, I have been a stockholder in it for a good many
423 years, and a director, and I was secretary part of the time and I was manager for three years.

Q. Between what dates were you manager of the company?

A. Well, during 1907-8-9.

Q. Whom did you succeed as manager?

A. R. A. Booth.

Q. What position did you hold in the company along in 1902?

A. I do not know whether I was secretary in 1902 or not,—I may have been. I cannot say, but I was a director in the company at that time.

Q. What part of the business or work of the company were you principally looking after at that time?

A. I was looking after the saw-mills.

Q. Did you have anything to do with the buying of timber claims?

A. No sir, not during those years, not before 1907.

Q. Who did look after that?

A. John Kelly at that time mostly.

Q. Now at the time that you became manager of the company and succeeded Mr. Booth, I will ask you to state whether or not Mr. Booth explained to you the condition of these claims that are now in suit here, and if so, what his statement was to you as to the condition under which they were held, and what the relation of the company was at that time to this land.

A. After I was elected manager he remained around the
424 office for a couple of months helping me straighten out all matters that I was not familiar with and among the unfinished business he explained to me the status of these four La Raut

claims,—Stephen La Raut and his wife and these two La Raut girls, Ethel and Lucy.

Q. What explanation did he give to you as to those claims?

A. Well, that those claims did not belong to the company, and that if at any time that land was sold, that these people should share in the proceeds. That he had an understanding with them when they took the claims that he was to carry the claims for them, and that he was a guarantor for whatever amount the company had advanced them on their claims.

Q. And did you as manager of the company agree to that? And accept that understanding of the matter?

A. Yes sir. And at the end of my term I informed Mr. Dixon as nearly as I remember it of the same arrangement, so that he could carry it on as the claims came up.

Q. Then it was the understanding of the officers in charge of the company during all of these years, that those lands were held in that way, was it?

A. Yes sir, that these claims were held as security for money advanced on the order of Mr. Booth.

Q. You may explain, if you know anything about the facts, as to whether the account showing these claims was kept separate from the other accounts?

425 A. Well, I never knew that, because I never went back into those old records, because I never had any occasion to.

Q. You do not know anything about that?

A. No.

Q. Did you ever know, or have any knowledge of the fact that these parties—these four La Raut people had made deeds to Robert A. Booth,—did you know anything about that?

A. No, I did not know what deeds they had made. I may have known it, but if I did, I have forgotten it.

Q. Were you manager when these second deeds were obtained from them?

A. What year was that, 1907?

Q. Yes.

A. Yes sir, I was.

Q. Do you recall the circumstance of getting the new deeds, the second deeds?

A. Well, I do about Stephen La Raut, and his wife, that is quite clear, because some one was suing him down in Douglas County and we heard something about it in the paper, and we were afraid that his claim would be attached, and then we took the deeds from him and his wife, and I presume we took deeds from the girls at the same time, but I do not recollect just what the reason was for taking deeds from the two girls at that time, but I know that was the reason we took deeds from Stephen La Raut and his wife.

Q. When those second deeds were taken, was it understood
426 that they were as security the same as it was before?

A. Yes sir, that was all there was about it.

Q. You do not claim for the company, or does the company

claim, or did it that by getting those deeds they got title—the absolute title to the land?

A. I, of course took title from Stephen La Raut when he closed up his claim in 1909, when he went to Canada.

Q. Now, was it your understanding as manager, or what was the fact about it, as to whether or not these four people continued to own their land after those deeds were made the same as they had before?

A. Certainly. I considered the deeds were just security for the amount of funds that the company had advanced them.

Q. Now state what you said about closing out with Stephen La Raut and his wife when they went to Canada, state the circumstances.

A. Well, as I remember it was along about the last of 1909 or first of 1910 that Stephen La Raut was yard foreman at Saginaw, and I was up there one day, and he said he had concluded to quit and was going to Canada or to Alberta to take a homestead and wanted to sell his claim. I did not want to lose him, and I tried to talk him out of it. He said he wanted to get out of it, what was coming to him on the claim. Well about a month or two later than that he came to the office as I recollect it, it was just during the annual meeting, or may be a day or two later, and we were ver-

427 busy, and I took him over to our small office and he said he had fully made up his mind to quit Saginaw and was going to Canada to get him a homestead and he wanted to clean up his homestead; I asked him what he wanted out of it, and he said that if he could get enough to get him over there he would be satisfied. I went to R. A. Booth and told him what Stephen wanted, and Booth said well, if he is determined to go, you had just as well settle with him, and let him go, so I went back and asked him what he thought he wanted to close the matter up, and he said fifty dollars, and I paid him and took his receipt for it.

Q. When was that do you say?

A. Well, it was between the first and fifth of February, I think. I know that it was just the time of our annual meeting, and Mr. Dixon had just been elected manager or was just going to be, I am not quite certain which it was, anyway Dixon said he didn't want to have anything to do with it, that he was busy and was new in the business and asked me to settle it with him, and I remember the fact that I helped Dixon settle a good many unfinished matters, and that was how I came to close this matter up. I think it was the day after Dixon was elected manager.

Q. While you were manager, was there ever any settlement or adjustment with Ethel La Raut or Lucy La Raut?

A. I think I took deeds from those two girls in 1907, I think it was or near that time.

Q. What I mean is, did those deeds remain as security to
428 the company as long as you were manager?

A. Yes sir.

Q. And were passed on to Mr. Dixon?

A. Yes, as I explained, sometime between February and April. I stated to Mr. Dixon,—I think it was early in February that I had

Mr. Dixon and Mr. Booth and myself up in the office, and Mr. Booth explained to Mr. Dixon as he had to me, and I corroborated his understanding to Mr. Dixon as to how these claims should be carried.

Cross-examination.

(Questions by Mr. JOHN McCOURT:)

Q. Mr. Booth explained to you that he had advanced this money in order to assist these people?

Y. Yes, I believe he did, that is the way he expressed it.

Q. What was timber worth up in that locality per thousand, or what is it worth now?

A. I presume claims as far back from the river as those are are worth twenty or twenty-five cents per thousand.

Q. Are not they worth about fifty cents per thousand?

A. I would not think so.

Q. If they are worth twenty-five cent- a thousand four million feet would be one thousand dollars. Did you make any investigation of the amount of timber on the La Raut claim at the time that you closed it out?

A. I do not recall whether I did or not.

429 Q. Did not make any effort to determine whether you were being fair and square with him, and in your efforts to assist him, or whether you were just simply closing it out like a usurer?

A. It was his own proposition, he came into the office and said that he would take so much money for his claim, and I am not in the habit of giving a man anything more than he asks for.

Q. When you assist a man, you usually assist him?

A. I was not assisting him.

Q. Not assisting him?

A. I was not assisting him.

Q. Did not Mr. Booth say anything to you that it was an outrage to take that man's claim for fifty dollars when he started in to assist him there?

A. No sir.

Q. That is was worth, four, or five or six times that value?

A. I do not recall that he said anything of that kind.

Q. Mr. Booth is very much like you when a man comes and says he will take a good deal less than a thing is worth, he usually takes him up?

A. I presume that he can testify to that better than I can.

Q. Did it ever occur to you when you got this mortgage satisfied to take a quit claim deed or something to show that the mortgage was satisfied?

A. No.

Q. You did not.

430

A. No.

Q. Do not you know that when a deed is once a mortgage

it is always a mortgage, and that it is a mortgage yet if you are correct in your statement?

A. I do not know that.

Q. And that you can never get a title to that land without foreclosure?

A. I do not know that.

Q. You do not know that?

A. No.

Q. You never took any of these deeds before that were mortgages did you up there?

A. I do not recall any besides those.

Q. That was an unusual method of doing business up there in that country?

A. Yes.

Q. If you bought timber before, you usually got the entire title to it?

A. As a rule.

Q. Why did not you put those deeds of the La Rauts to R. A. Booth on record?

A. I do not know that I ever say any deeds from the La Rauts to R. A. Booth.

Q. You heard about it?

A. I heard of it.

Q. You understood that the deed was made to the company, did not you?

A. I do not know that I ever knew.

Q. You thought that company owned those lands until Booth came in and told you about this deal?

431 A. I knew nothing about it at all, I was at the saw mill and knew nothing about the matters of the company, previous to 1907.

Q. You cannot recall why you got those La Raut girls to make deeds at the same time you got the deed from Stephen La Raut and his wife.

A. No, I do not.

Q. You were not afraid that you would be cheated?

A. I think that was the reason as near as I can recall it. I will state this that Booth had retired from the active management of the company and was no longer a director, and I thought it was better for the company to have security so long as it had put up the money.

Q. When the land was held in that way, why did not you have something to show to the company that those deeds were security?

A. No, that shows that it was a mortgage.

Q. The deeds does not show?

A. A man don't make a transcript of all his papers or of all his contracts in his book.

Q. But where there is a mortgage, it shows on its face.

A. Some times.

Q. Usually.

A. No, I do not think it does.

Q. You and Booth were large holders of the stock in the company at that time as compared with the entire stock?

A. No, we were not large holders.

432 Q. There is nothing on the records of the company to show the majority of the owners of stock that there was any hold back on these deeds to this land?

A. No, Booth was manager and had had absolute authority to do anything that he wanted to do, and when I was manager of the company I had authority to do the same thing and I was informed of the condition of these deeds and Mr. Dixon knew the same thing.

Q. You did not have any of those sums of money charged to Mr. Booth at all that you advanced?

A. I think there was only one sum of money advanced during my administration, I think that was one payment to Ethel and Lucy La Raut. I cannot say now who it was charged to. My impression is that it was charged to stumpage.

Q. Did you pay that on the order of R. A. Booth, or on your own account?

A. No, I paid it on my own authority.

Q. You did not take a receipt at that time or any memorandum to show the condition of the matter?

A. Simply charged it in the books.

Q. Did you charge it to them, or charge it to this land?

A. I see that it was charged to stumpage on the books.

Q. You carried this loaning business in your account the same as you did other expenses of the land?

A. Yes, in this case there was a stumpage account and a great many things are put into that outside of the purchase price
433 of the land.

Q. You understand that outside of the purchase price of the land, a great many things were charged to the land that were expenses.

A. If we made a payment on land, we charged it to stumpage, and as fast as we made payments, we continued to charge it to stumpage.

Q. And if you merely made a loan to an individual and took his land as security it was a different matter from a purchase?

A. No, we would enter it as a part payment and when we sold the land, it would be taken out the same as any other expenses that were made.

Q. What was it that you told Dixon last February?

A. Well, when Stephen La Raut came in, we explained about the Stephen La Raut matter, and he asked me to clean it up, which I did, and we told him the status of the two remaining La Raut claims. That when these girls wanted to sell their claim they could handle them as they saw fit and that Booth had guaranteed the original amount of money that was put into the claims, but that the title remained in these La Raut girls, and Mr. Dixon so understands it, or did at that time.

Q. It seems strange that you and Booth did not have some mem-

orandum of that kind entered up in the books, so that any officer of the company who should examine the books, or any stockholder, or anybody else interested, might see exactly what that transaction was, and not leave it to the oral tradition of Booth and Kelly and Dixon.

434 A. Well, the Booth-Kelly stockholders had entire confidence in the people that were managing its affairs, and a man don't put every thing that he knows into writing.

Redirect examination.

(Questions by Mr. TANNER:)

Q. Mr. McCourt asked you if there was any quitclaim deed taken at the time you closed out with Stephen La Raut and Alice La Raut,—did not you take a receipt, showing the settlement?

A. I took a receipt, yes.

Further cross-examination.

(Questions by Mr. McCOURT:)

Q. What did you do with that receipt?

A. It is filed among the company records, I presume.

Mr. McCOURT: I would like you to produce that receipt.

Q. Did you take a receipt from Lucy and Ethel in 1907?

A. I think not, I know that I took a receipt from Stephen La Raut.

Q. I would like to have it.

A. We have it somewhere.

(Witness excused.)

Thereupon the taking of testimony herein is adjourned until tomorrow morning January 18, 1911, at 10:30 a. m.

GEO. A. BRODIE,
U. S. Examiner.

PORTLAND, OREGON, Jan. 18, 1911—10:30 o'clock a. m.

435 At this time the parties herein appear before G. A. Brodie, examiner, at the U. S. Grand Jury Room. Portland, Oregon, pursuant to adjournment, and thereupon the following proceedings are had to-wit:

A. C. DIXON is called as a witness for the defendant- and being first duly sworn, testified as follows:

Direct examination.

(Questions by Mr. A. H. TANNER:)

Q. State your name, age, residence and occupation.

A. A. C. Dixon, residence Eugene, Oregon, age thirty-five, occupation, lumberman.

Q. State what position you now hold with the defendant, the

Booth-Kelly Lumber Company, and how long you have held that position?

A. I am manager of the company, and have been since I think the first day of February, 1910, or early in February.

Q. Whom did you succeed as manager?

A. Mr. George H. Kelly.

Q. Prior to that time, how long had you been connected with the company, the Booth-Kelly Lumber Company?

A. I have been an employee of the company since March, 1900.

Q. In what capacities?

A. I began as yard foreman, shipping clerk in 1900 at Wendling and was later superintendent of the plant at Coburg,—in June, 1905, I began work as sales manager at Eugene and continued in that capacity until February, 1910.

436 Q. Did you hear the testimony of Mr. Booth and Mr. Geo. H. Kelly given here before the examiner as to what occurred about these claims referred to as the "La Raut Claims," about the time you became manager of the company?

A. I did.

Q. You may state what the conversation was at that time, and what the understanding was as you received it from them as to the condition in which those claims were?

A. The matter was brought to my attention about the first of February, I think the first or second day after I was elected manager, and while some of our stockholders and directors were still in the office, and still busy getting rid of the work of the year before. I had known very little of the details prior to that time, and Mr. Kelly came and told me that Mr. La Raut was there and was going away and wanted to dispose of his rights in his claim, and get what money he was to get out of it at that time. I told him it was something that I was unfamiliar with and asked him for the details, and he told me something about it very briefly. I then went with him into Mr. Booth's room and he told me there what Mr. Booth had told him prior to that time, and Booth then told me the details of the transaction, all as he related on the stand, and told me of his relationship to the La Rauts,—I do not mean his relationship in law, but his attitude towards them, and what he had done for them at different times, and how they came to take up these claims, and the understanding in regard to the claims, and told
437 me substantially what Mr. Kelly had, that they were going away and wanted to dispose of those claims.

Q. You are speaking of Stephen La Raut and Alice La Raut, talking about going away?

A. Yes, at that time he also told me in regard to the claims of Ethel and Lucy La Raut. He told me that he tried to get Stephen to stay in Oregon, and not go to Canada and not to dispose of his claims finally, but that he had nevertheless decided to go, and since that was the case, it was only fair that we settle up with him at that time. The rest of the conversation, as I remember it was to this effect, that I told Mr. Kelly that I was unfamiliar with the details and had a great many other things to attend to at that time,

and while I was willing to accept the responsibility of buying the claims and paying for them, but still I thought if he would agree with Mr. La Raut as to what the price of the claim should be, that I would see that it was paid, and he did this and Mr. La Raut and his wife were paid for their claims and receipts were taken. That is all that I remember in relation to those two claims.

Q. That closed out their interest in the claims at that time did it?

A. Yes sir, it did.

Q. Now state whether or not there has ever been any purchase or settlement of the other two claims,—those of Ethel M. La Raut now Ethel M. Lewis, and Lucy La Raut?

A. There has been no money paid them, or any settlement effected that I know of since my term of office as manager.

Q. State whether or not you understood from what Mr. Booth and Mr. Kelly former managers of the company told you about these claims, that they were held by the company as security for the advances that had been made?

A. Mr. Booth in that conversation, I think did most of the talking. He told me that the claims of Ethel and Lucy La Raut at that time were in the same shape and condition as the Stephen and Alice La Raut claims,—that they were purchased and acquired by these parties with the idea that they might be sold with our timber, and if not, they were to be held until such time as they wanted to dispose of them. We had advanced some money,—what amount, I did not know at that time, and we could hold the possession of the property until it was sold, and if we finally acquired the claims, that there was to be a further sum paid, which was undetermined at that time.

Q. Well as to your understanding now as to the other two claims,—that is, the Ethel M. Lewis claim and the Lucy La Raut claim it was that they owned the land themselves subject to the mortgage or claim of the company for reimbursement?

A. That is my understanding, that they still have an estate in it, and a say as to what should become of the land, and that they had the right to determine whether we would finally have it, or whether they would sell it for their own purposes, or dispose of it otherwise.

439 Q. I believe you verified the answer that was filed in this case, the original answer, did you?

A. I think so.

Q. Well, it seems that in the answer,—it has been amended to correct it now by an amendment, but in the original answer, there is an admission or statement that the defendant, the Booth-Kelly Lumber Company is the owner of the equitable, as well as the legal title to the land, and which of course, according to our claim that is not in accordance with the facts—I will ask you to state the circumstances under which you verified the answer, and how that mistake as to these two claims of Ethel M. Lewis and Lucy La Raut came to be made.

A. As to how the answer came to be written up the way it is, I do not know anything about it, I did not see it until the time

that I signed it. I understand that it was prepared in Portland by you, and it was brought in to me by Mr. Woodcock who told me that it was necessary that it should be signed. As I remember it I suggested that Mr. Dunbar might sign it, as he was an officer of the company being secretary and treasurer, and I was not a member of the board of directors, that I was only manager. He said that it was fixed for my signature and without paying attention to the details, or discussing the various points embodied in it, I signed it supposing it was more a matter of form in order to comply with the requirements necessary to get the case for the trial.

Cross-examination.

(Questions by Mr. McCourt:)

440 Q. You considered it a pretty heavy responsibility taking over those two La Raut claims did not you?

A. No.

Q. For fifty dollars apiece?

A. No, it was not a heavy responsibility, but it was something that I did not know the details of.

Q. You spoke of it as though it was a weighty matter that you turned over to Mr. Kelly.

A. I did not intend to give that impression that it was weighty at all.

Q. You did not consider it a very weighty matter to pay fifty dollars for a claim worth anywhere from fifteen hundred dollars to five thousand?

A. I did not consider the matter of responsibility at all, it was something that I was unfamiliar with and that I did not know the details of, like a number of other things that Mr. Kelly straightened up.

Q. You did not know at that time, that those claims run from three million five hundred feet to seven million feet?

A. I do not think I knew what the cruise was at that time, only approximately knew about what it was.

Q. You did know about what it was?

A. Yes, I knew what the country was, and what claims ran up there.

Q. You considered it snap to get those claims for fifty dollars over and above the five hundred dollars that had been expended on them?

A. No, I did not consider that.

Q. You did not know that Alice La Raut's claim carried *between* seven million three thousand feet?

A. No I did not know the details of the cruise.

Q. Who gave the attorneys their information on which to draw their answer,—did you?

A. Part of it,—I talked it over with the attorneys and I think Mr. Booth did probably.

Q. You did not tell them anything about you holding possession as it has been put in evidence now?

A. It was talked over between us, I do not know who told him.

Q. Who else talked to him besides you?

A. I think Mr. Booth probably and Mr. Dunbar. I do not know where they got all of their information.

Q. None of them gave the attorneys Woodcock and Porter, or who ever it was, that information?

A. I think that was all the information that I had at that time.

Q. You never told them anything about this mortgage business at all?

A. I do not remember all that I told them, or where they got their information.

Q. You do know that you did not tell them anything about that mortgage business at all?

A. I do not know.

Q. You had no reason for having told them anything about it?

A. No.

Q. You had no reason for having told them anything of the kind?

A. I talked it over with them.

442 Q. That is since you got down here?

A. Before we got down.

Q. You never told any of them that there was any mortgage there, or that they had an equity in this land?

A. I do not know whether I passed the information to them or whether it was given to them in my presence by Mr. Booth. About the time complaint was served, and before the answer was prepared.

Q. Then if they went according to the understanding with Mr. Booth that there was some equity there in those people why did not they include it in the answer, and allege it in the answer and not allege it as they have alleged it?

A. All the facts were related to the attorneys prior to the time the answer was filed.

Q. And the attorneys had overlooked all about this important statement?

A. I think possibly they did. Now most of the talk was with Mr. Woodcock and Mr. Tanner I think drew the answer.

Q. Now, the first you ever heard of this thing, was in February, 1910?

A. No, not exactly.

Q. When was it exactly?

A. I mean not exactly the first time—I do not know the exact date, but in conversation with Mr. Lewis, the husband of Ethel M. Lewis, two or three years prior to that, I understood from him, that his wife had a claim which the company held a deed for,

443 from which he was to receive a further payment if she finally sold to the company and also that her sister held a claim in the same way.

Q. Who is this man Lewis?

A. He is an employe of the company, sales manager.

Q. Did you have some consultation with Mr. Lewis and Mr. La Raut, or both in December, 1909, in regard to these claims?

A. No sir.

Q. About the time the special agent was up there investigating them.

A. No.

Q. Ever look at the book of the company to see if there was anything in there about the ownership of the land by the company?

A. I never investigated the books on that line at all.

Q. You did not examine the books in regard to the ownership by the company of these lands?

A. No sir.

Q. So far as you were concerned, you exercised complete ownership over them?

A. Yes.

Q. On behalf of the company?

A. Yes.

Q. Since you have been there?

A. Yes sir.

Q. Who were the board of directors of that company?

A. Who are now?

444 Q. Qes.

A. Mr. Booth, Dunbar. P. S. Brumby, Mr. Daniher, Mr. Benson, Mr. Cox, Mr. Buck, seven I think.

Q. Were they directors in 1909?

A. Not all of them. There was some changes made 1909.

Q. And in 1910?

A. In February 1910, there was a new board, some of the old members left out.

Q. Who is this man Brumby?

A. He lives in Portland, his name is P. S. Brumby, he is a stockholder of the company and handles timber land and timber property, that is all I know about him.

Q. Now was this matter told the board of directors while you were there?

A. No the board of directors had adjourned and gone before the matter came up.

Q. You never called their attention to it since?

A. I think so. I think that at some meeting during the summer, we did not have a meeting very often, but at some of the meetings we mentioned the matter, I think about the suit.

Q. Was anything mentioned about this equitable ownership?

A. No.

Q. You did not disclose that to them at all?

A. No, they had all been directors and stockholders as long as I had, and the discussion was about other things.

445 Q. The discussion was that there had been a suit started to set aside patents to land owned by the company, and not to land upon which they had a mortgage?

A. I do not remember, that there was any discussion, but the

information was given that the government was seeking to cancel some patents.

Q. The representation was that it was land owned by the company, and not land upon which it held a mortgage?

A. I do not think there was anything said about it.

Q. The information sought to be disclosed was that it was land owned by the company?

A. I do not think so.

Q. Was there any facts stated about any equitable ownership in anybody else?

A. I do not remember that the case was talked over if it was talked over fully that statement was probably made, but I do not think that anything was given to the directors.

Q. Who prepared the minutes?

A. Mr. Dunbar.

Q. Are all of these things included in the minutes?

A. I do not think there is any mentioned of that of anything of that sort in the minutes. The minutes were very formal.

Q. You did not read them over?

A. No.

Q. You knew some years before that these La Raut people were related to Mr. Booth by marriage, did not you?

446 A. Yes.

Q. It was not that relationship that you speak of that Mr. Booth talked about when you and Mr. Kelly were together?

A. No, I do not mean blood relation, or relationship by marriage, I mean his financial relationship to them—things that he had done for them, and helped them to, in purely a business way, from that standpoint.

Q. Well in exercising those business faculties of yours, if an entire stranger had been in that position and had asked you five hundred dollars or a thousand dollars for the equity Stephen La Raut had in that claim, you would have considered it would not you?

A. I might have.

Q. Very apt to have acceded to it?

A. It depends upon what understanding I might have had as to the original arrangements with La Raut. I would have tried to carry that out.

Q. Well, if the original arrangement was that a claim should stand in the name of the company that was worth fifteen hundred dollars and upon which you had only received five hundred dollars, and he asked you for that a thousand dollars, would you have given it serious consideration?

A. I might have but that was not the fact in regard to this claim, it was not worth fifteen hundred dollars, or anything near that when it was taken up.

Q. What was it worth when he talked it over with you?

447 A. I think its value would be a matter of opinion.

Q. You would not say it was worth less than fifteen dollars, would you?

A. It would be worth just what he could get for it, all the circumstances being considered.

Q. You have not answered my question, you would not say that it was worth less than fifteen hundred dollars, or was not in February, 1910?

A. It might be.

Q. Possibly it was worth considerable more than that?

A. It might be.

Q. Then, if I understand you, La Raut had that equity of a thousand dollars or more in there, how does it come that you took it over for fifty dollars.

A. I do not understand that he had an equity worth a thousand dollars. I understood that he was to leave the claim there until it was finally sold when he would be paid his share, whatever it was worth when it should be sold.

Q. I thought that you were trying to convey the idea that La Raut had a claim there, and that he was under no obligations to turn the land over to the company, and that it belonged to him when he paid the money that you had advanced.

A. That was the understanding, and if he had come and repaid the money that had been advanced, that would have been a different proposition.

Q. Suppose he had sold the land, and that he had come
448 and offered you the money, and asked you to release it, would you have done it?

A. I would have inquired into the circumstances.

Q. Yes, but you had inquired into them and you knew all about them.

A. Yes, at that time.

Q. Then at the time we are speaking of, suppose La Raut had come to you and offered to pay you the five hundred dollars which you had advanced, and wanted a deed to the property, would you have deeded it?

A. I would have no authority to give a deed. I would have to put it up to the directors.

Q. You would have told him to go to grass, would not you?

A. No, I would not have been in a position to do that, I would have put it up to the board of directors, for their action.

Q. Aside from the fifty dollars that you testified about, has the company advanced La Raut any other money since the beginning of 1910?

A. No, not as far as I know.

Q. You have not advanced him five hundred dollars since he went to Canada?

A. No sir.

(Witness excused.)

H. A. DUNBAR is recalled for further Cross-Examination.

(Questions by Mr. JOHN McCOURT:)

Q. Mr. Dunbar, have you brought with you, the ledger for 1902, the Booth-Kelly Lumber Company?

449 A. Yes.

Q. Will you turn to page three of that ledger upon which appears the stumpage account of the Booth-Kelly Lumber Company?

A. Yes sir.

Q. That account is ruled so that there appears a debit and credit column does it not?

A. Yes sir.

Q. Which is the debit side?

A. The left side.

Q. Now, on Jan. 1st, 1902, it shows a balance on the debit side of \$815,994.07?

A. Yes sir.

Q. Now in that debit side all the purchase price and expenses incurred on behalf of the timber owned by the company?

A. Yes sir.

Q. The whole of them?

A. Yes.

Q. What entries are made on the credit side of that account?

A. Such entries as stumpage should received, credit for.

Q. What did they consist of?

A. Well, they consist of the amount of stumpage cut during the year.

Q. And the amount of timber sold?

A. Or timber sold.

Q. Ordinarily whatever tracts of timber are entered in this stumpage account they are entered by description?

450 A. Yes sir.

Q. And without reference to the name of the party owing the same, or from whom it was secured?

A. Not all.

Q. I say ordinarily?

A. Well, ordinarily the name would not appear in the ledger.

Q. I see an entry here on March 26, 1902, Mohawk, 79,638.88, what does that refer to?

A. That was timber lands bought in the Wendling District that was entered in the Mohawk account and was transferred into the stumpage account.

Q. That was a short method of describing the land in the ledger.

A. Yes sir.

Q. I direct your attention now, to the entries upon July 31st, 1902, and will ask you to read them into the record.

A. Southeast quarter of section two,—twenty-two west. Northwest 34, 21-2 West. \$1,000.00;

Lot 9-10-15-16-28-21 2 West.

Northeast of 23-21-3 West.

Southeast 26-21, 3 West.

Lot 1-2-7-8-28-21-2 West.

Those four Two thousand dollars.

Q. Now, there was no name attached to this at all was there?

A. Not in the ledger.

Q. They are carried into your stumpage account, just the same as all other timber land entries were carried into the stumpage account.

451 A. They were charged into the stumpage account.

Q. And ever since that time, you have carried the total of the stumpage account forward from time to time and have included those claims in that as part of that stumpage account?

A. Since they were entered?

Q. Since they were entered on July 31st, 1902?

A. Yes.

Q. And never at any time have you excluded them from the total of the stumpage account?

A. No sir.

Q. Now this transcript which the government put in evidence and which was furnished by you covering stumpage was not a ledger entry at all was it, but a journal entry?

A. Well this entry is carried to the ledger?

Q. The account you gave here was not a ledger account at all, was it?

A. Yes.

Q. Is that a ledger account?

A. Yes.

Q. What is that? In that ledger account to show?

A. The description which I just read.

Q. This does not purport to be a copy of that stumpage account in your ledger at all, does it-

A. This is a copy of the stumpage account itemized.

Q. How do you get S. A. La Raut?

A. From the journal.

Q. Is not that what I said?

452 A. If I understand, you have got to make the journal before you make your ledger.

Q. Turn to your journal and let us see what you have got there. (Witness turns to journal.)

Q. Now that is where you get this account that you gave us?

A. Sure.

Q. Now where in your ledger is this dollar mark \$301.03?

A. It is included in the item of \$26,236.93.

Q. Entered where?

A. In the journal at page 358.

Q. And where in the ledger?

A. Dec. 31st, 1902.

Q. What did that \$26,36.93 represent, or include? What was the account that it was run into, or made into?

A. That included the cruising for the year 1902, \$23,35.90, and the other account, \$301.03.

Q. Then you included your breakfast and dinner and the ex-

penses out to these claims of the La Raut people and Roche's expenses, and the land office fees in the general cruising account of the Booth-Kelly Lumber Company did not you?

A. The items mentioned are in the Brumbaugh land claim account.

Q. And you carried it into the stumpage account added to your cruising account as a general charge against the stumpage account for expenses during that year?

453 A. It was carried into and charged against the stumpage account.

Q. A general charge for cruising and other expenses?

A. All expenses were charged to the stumpage account.

Q. What I am getting at is, that this account here of \$301.03 was included in your general expense account covering all land owned by the company, and carried forward to your ledger in that shape?

A. It was at the end of 1902.

Q. And it was not charged at any time to any one of these particular claims in the journal, was it?

A. No, sir it was charged to one account.

Q. I wish you would now turn to your journal of 1902, page 55 in relation to the Brumbaugh land claim, where were they first entered?

A. Entered in the cash book at page fifty-five.

Q. Did you make any entry of those in the journal?

A. No, sir.

Q. Did you make these entries at the time the first expense was incurred?

A. I cannot say as to that.

Q. If not, how did you keep track of those small items, 72c, 25c and the other irregular sums?

A. From a memorandum.

Q. Made when and by whom?

A. Made at the time of the expenses?

Q. What sort of memorandums and where were they kept?

454 A. I cannot say, I did I presume.

Q. You made them yourself?

A. I presume I did.

Q. Now, I wish you would turn to your ledger where it says "Brumbaugh Land Claim." There are no entries there containing the names of any of these parties?

A. No, the ledger never shows the name.

Q. Now, then turn to the Ethel La Raut account, and let us see what it looks like,—all of those claims appear upon the same page, or rather all of these accounts against Edward Jordan, Stephen La Raut, Mrs. Stephen La Raut, Ethel La Raut and Lucy La Raut, appear upon the same page?

A. Yes, sir.

Q. And they were all closed out on August 12, 1902?

A. Yes, sir.

Q. With the exception of the Dan Brumbaugh entry?

A. Yes, sir.

Q. Which was not closed until October 30th?

A. That account was not closed in the 1902 ledger.

Q. Not closed in the 1902 ledger?

A. No sir.

Q. What is there in the 1902 ledger to show that it is not closed?

A. The account is not balanced.

Q. The four hundred dollars is carried forward?

455 A. Yes, sir.

Q. Now, then, Lucy La Raut, Ethel La Raut, and Stephen La Raut accounts were closed at that time were they not?

A. Yes, sir.

Q. And never opened afterwards?

A. No sir.

Q. You do not carry any such account in your books?

A. No sir.

Q. Never have since that time?

A. No sir, not that I know of.

Q. You would know it if there was?

A. Yes.

Q. Turn to your journal at page 70 under date of March, 1902, the company bought some timber land from D. B. McBride, J. D. Hughes?

A. Yes, sir.

Q. A total of \$1504?

A. Yes sir.

Q. That was charged to stumpage at that time?

A. Yes sir.

Q. You also carried the account into the ledger, of D. B. McBride, and J. D. Hughes?

A. Yes sir.

Q. So you kept those two accounts just as much separate as you did any of these La Rauts?

A. I do not know just what those accounts were.

Q. You do not know just what they were?

A. No, I do not remember those accounts.

Q. You do not remember the La Raut account, except
456 what you see here, do you?

A. No sir.

Q. Well, the accounts as they appear in the book, are identically the same are they not so far as the bookkeeping is concerned.

A. The accounts are carried to the ledger the same as all accounts.

Q. You stated on yesterday, that you kept these La Raut accounts separately because Robert Booth had told you something about them?

A. Yes sir.

Q. Now, what different scheme did you have than you had to keep the account of D. B. McBride and J. B. Hughes? For instance?

A. I cannot say just why those accounts were opened in that way.

Q. What difference is there between those accounts and the others in your scheme of bookkeeping?

A. Because I was told to keep their accounts separate.

Q. You kept one just the same as the other?

A. You will find accounts all through here.

Q. But you did keep the La Raut account separate?

A. Yes.

Q. And you did not the rest?

A. I kept them so it could be determined what had been paid.

Q. Did not you keep the D. B. McBride and the J. D. Hughes account so you could tell what had been paid?

457 A. I certainly did.

Q. There is no difference in your scheme of bookkeeping, is what I am getting at?

A. You will find these accounts, all carried to stumpage account.

Q. When you find it, the La Raut account was carried to the stumpage account like any other?

Q. Just the same scheme was not it?

A. Yes.

Q. Carried it right in to its proper place.

A. Yes sir.

Q. Have you got any loan account in this ledger of any money that was loaned on land or anything else?

A. No.

Q. You did not do any of that kind of business?

A. There is no such an account there.

Q. Look at your journal at page 201, to the \$800 item on July 31st.

A. Warring account I find Warring in here.

Q. I wish you would turn to this ledger under the Lucy La Raut account and show me what there is in that account to show the payment of these expenses down to Roseburg.

A. Those expenses were entered in the Brumbaugh group of claims.

Q. If you did not know that there was any Brumbaugh land claim account, how would you find that out?

458 A. I knew it was in the ledger.

Q. Well, if you had ever charged it to Lucy La Raut, it would be in her account?

A. Yes.

Q. If you had charged it to her at all it would be?

A. Yes, sir.

Q. Now, as a matter of fact, the entries that you have made in regard to these claims are just such entries as you would have made if you had been taking up the land for the company, just as if the company had paid or advanced all of their expenses, and the expenses of taking the claim, and the like and they had turned over the claim to the company and had received \$100.00 for their services.

A. If the company had bought the land, they would have been charged to the stumpage account.

Q. They were charged to the stumpage account?

A. Yes, later on.

Q. Just as soon as they could be?

A. I presume they were.

Q. And if the land had never been turned over to the company, they would never have been charged to the stumpage account?

A. They would have stood in the account against the individuals.

Q. And the money advanced, would have stood against the individuals?

A. Those accounts were opened as I have stated, to save time and to keep these claims separate from any other claims.

459 Q. They were?

A. Yes sir.

Q. What authority did you have to open that account of the Brumbaugh land claims some three months before the titles were turned over to the company?

A. Mr. Booth wanted those accounts separate from the others.

Q. Those claims?

A. Yes sir.

Q. That is, the La Raut claim and the Jordon claim, and the Roche claim and the Dunbar claim, and the Brumbaugh claim?

A. I am referring to the La Raut claims as regards Mr. Booth.

Q. You kept the La Raut claim separate from yours and Roche's and Jordon's account?

A. Our accounts were running accounts.

Q. You did not charge your account with any of the items contained in the Brumbaugh Land Claim account?

A. No sir.

Q. The Brumbaugh land claim account was opened in the books of the company about the time the filings were made upon these lands?

A. Yes.

Q. And all expenses incurred by the Booth-Kelly Lumber Company in regard to these claims were charged to the Brumbaugh land claim account?

A. Yes sir.

460 Q. And later that entire Brumbaugh land claim account instead of being charged to the individuals, who took the claims was charged to stumpage account?

A. Yes sir.

Q. Without ever having gone into the accounts of any of the individuals at all?

A. Yes sir.

Q. That was the only separate — there was to that group of claims?

A. Yes sir.

Q. That included the Roche claim, the Brumbaugh claim, your claim, Jordon's claim and the four La Raut claims?

A. Yes sir.

Q. And all of those claims were alike charged to stumpage account?

A. Yes sir.

Q. And ever since carried in the stumpage account of the company?

A. Yes sir.

Q. Showing on the books as an asset of the company, consisting of timber land.

A. They show that way?

Redirect examination.

(Questions by Mr. A. H. TANNER:)

Q. Now, you say that the credits in the general stumpage account is for timber cut from the lands?

A. Yes sir.

Q. For the year?

A. Yes sir.

Q. Now suppose that the company did not get the land,—
461 that is, suppose that he had made payment on the land, for instance,—a partial payment, would it be carried into the general stumpage account?

A. In some cases it would.

Q. Would it not in all cases be carried into the stumpage account as an expense.

A. All expenses are charged to the stumpage account.

Q. Is that not also true as to cruising land which perhaps the company would fail ultimately to get title to?

A. Yes sir, cruising is charged to stumpage.

Q. Now, you referred in your testimony to a Warring claim, and that that was charged direct to stumpage account, what do you mean by that?

A. It was carried from the journal directly into the stumpage account.

Q. Then there was not a separate account of that particular claim?

A. No sir.

Q. But in reference to these Brumbaugh Creek claims, there was a separate account?

A. Yes sir.

Q. From the general stumpage account?

A. Yes sir.

Q. And the items of that Brumbaugh Creek account were traceable into the general stumpage account from this separate special account that was kept as to those claims?

A. Yes sir.

Q. And you say it was kept that way under the instructions of Mr. Booth?

A. Yes sir.

Q. Now you testified in reference to an entry occurring in the journal for 1902, page 55, where that item of \$260.00 and some occurred that you said was for cruising and so on in addition to the

item of \$301.03,—did that item of cruising include the cruising of other lands besides these particular lands in the Brumbaugh district?

A. Yes sir, I cannot say just as to the district but it included the expenses of cruising.

Q. It would include the expenses of cruising all land of the company for the year 1902, would it not?

A. Yes sir.

Q. Is it not a fact that the company some times cruised land that they did not own? And other land that they expected to acquire or were thinking of taking, or acquiring by purchase.

A. They did.

Q. And this item includes all of the expenses for cruising during that year?

A. Yes sir.

Q. Now, I understood you to state that in the ledger accounts that the name of the person from whom the lands were acquired, was not given,—just the description of the land?

A. No sir, they are not given.

Q. You stated that the Ethel La Raut account and the Lucy La Raut account and the Stephen La Raut and the Alice La
463 Raut account appeared in the books there to have been balanced, what is your custom in regard to ruling down accounts even before they are closed?

A. We rule an account when it balances, then, if there is any new transaction, it follows along in the account after the account is ruled off.

A. Yes sir.

Q. What is the purpose of that?

A. Just simply a method of bookkeeping so you would not have to keep an account back further than the account balances.

Q. There are items occurring in these La Raut accounts after they were ruled down, are there not?

A. Not to those accounts direct. It was not charged to those accounts.

Q. Well, where did those items of payment appear that were made subsequently?

A. In the stumpage account.

Q. They appear in the stumpage account?

A. Yes.

Q. What books of the company had you been referring to in your testimony?

A. The ledger, the cash book, the journal of 1902.

Q. Were those brought here at the request of the government's attorney?

A. They were.

Q. What is the fact as to whether the government officials have had access to these books before?

A. They have had.

Q. When?

A. I do not remember the date, being the later part of December.

464 Recross-examination.

(Questions by Mr. JOHN McCourt:)

Q. I direct your attention to the account of C. Fisher, appearing in the journal at page 245, September 16th, and state what your journal shows?

A. It shows an account against C. E. Fisher.

Q. For what?

A. \$500.00.

Q. What does that charge consist of? As shown by that charge?

A. A payment on account.

Q. Where was that carried in the ledger?

A. To ledger page 79.

Q. Where do you find the next charge against Mr. Fisher?

A. Journal Page 348.

Q. What do you find there?

A. \$1800 on account.

Q. What did that charge consist of?

A. A payment on account.

Q. That was on account?

A. Yes sir.

Q. How was it paid?

A. By check.

Q. That is all charged against Mr. Fisher, or rather that is all the charges against Mr. Fisher appearing in the ledger is it not?

A. Yes sir.

Q. Where do you find a credit to Mr. Fisher?

A. Journal page 247.

Q. Where do you find it there?

465 A. A credit of \$2300.

Q. What for?

A. For the southeast section 2, 18-1-East.

Q. What do you find in the ledger in regard to that?

A. It was carried to the credit of C. E. Fisher's account in the ledger.

Q. And Mr. Fisher's account is credited for that quarter section of land?

A. Yes sir.

Q. With \$2300?

A. Yes sir.

Q. That balances the account?

A. Yes sir.

Q. What became of the account then?

A. It was closed.

Q. Closed out?

A. Yes sir.

Q. That ended that account?

A. Yes sir.

Q. It has been entered ever since?

A. I cannot say as to that.

Q. So far as this ledger shows it had been?

A. Yes sir.

Q. And so far as appearances are concerned, and so far as the face of the record is concerned, it was just like the La Raut account?

A. It was balanced the same way.

Q. When did that go into the stumpage account?

A. September 17th, 1902.

466 Q. Turn to your stumpage account, do you find it there?

A. Yes.

Q. There is not a C. E. Fisher entered in the ledger in that account?

A. Not in stumpage account.

Q. Just the description of the land?

A. That was all.

Q. Now then can you describe what the difference is between that Fisher account and the Alice La Raut account for instance, in so far as the ledger is concerned.

A. I do not remember the condition of the particular account.

Q. What differences do the books show?

A. The books show that the accounts were balanced.

Q. It shows the same in the books?

A. It shows that they were balanced, yes sir.

Q. I wish you would hunt that cruising account of \$2,600.00,—now then, can you tell me what that item of \$2,335.92 was made up of?

A. It closed the cruising account in the ledger.

Q. How did you reach it?

A. The cost of cruising for the year of 1902.

(Witness excused.)

GEORGE KELLY is recalled for further cross examination.

(Questions by Mr. JOHN McCURT:)

Q. What capacity were you occupying in relation to the Booth-Kelly Lumber Company, in 1902?

467 A. Well, I was a director in 1902.

Q. Were you directing anything?

A. I was superintendent of their mills.

Q. Of their mills?

A. Yes.

Q. Now that company was acquiring timber was it not down in this Brumbaugh District at that time?

A. Yes.

Q. And prior to that time?

A. I think about 1901, they began to buy in there.

Q. And during all of that time, 1901 and 1902, it had cruisers in that country all of the time?

A. No, not all of the time.

Q. Well, you cruised the entire country?

A. No, not until later than that we never made a systematic cruise of the whole country until in later years. Then we cruised the whole country, or the eastern part of Lane County pretty well everything.

Q. You had Dan Brumbaugh down there in 1901 and 1902?

A. I think he worked a good part of the time, but not all together down in there. He cruised for the company a good many years, in there and in other sections.

Q. You did that for the purpose of ascertaining the quality and quantity of timber in there with a view of securing title?

A. No sir. We have a cruise on nearly everybody's land in the Eastern part of Lane County,—not only our own, but every-
468 body else's.

Q. You did that for the purpose of, and with a view of acquiring title?

A. We wanted to know what was on the land, so that if at any time we wanted to buy it, if a man came to the office, we would not have to wait ten, fifteen, or twenty days to know whether we would take it or not.

(Defendants rest.)

Rebuttal.

GEORGE SORENSON, is called as a witness for the government on rebuttal, and being first duly sworn testified as follows:

Direct examination.

(Questions by Mr. JOHN McCURT:)

Q. What is your business Mr. Sorenson?

A. I am in the timber business.

Q. In Oregon?

A. Yes sir.

Q. How long have you been in that business?

A. About twenty or thirty years.

Q. What have you been doing in your capacity as timber man?

A. Looking timber over, selling and buying it.

Q. In the carrying on of your business, have you become familiar with the value of timber in Oregon?

A. I certainly have.

Q. Have you had any experience in timber down in Lane County?

A. Yes sir.

469 Q. In Townships 21 and 22 south of Ranges two and three west?

A. Yes sir.

Q. Do you know the district called the Brumbaugh River District?

A. Yes sir, I do.

Q. Were you familiar with the value of timber in that district during the year of 1902 and about that time?

A. Yes sir.

Q. What was the value of timber there at that time?

A. Well, about eight hundred dollars,—about five dollars an

acre,—we figured a claim at about five dollars an acre, or eight hundred dollars.

Q. Eight hundred dollars for a quarter section?

A. Yes according to the claim, but the general value was about eight hundred dollars, or five dollars an acre.

Q. Say, for a claim that carried from six to seven million feet of timber?

A. It would be worth eight hundred dollars.

Q. If the claim carried four million feet, what would you say?

A. Well, we would not figure that so much, but when we run the claims out, we run them at about eight hundred dollars.

Q. Eight hundred dollars a claim, taking them one with another?

A. Yes sir, checking them off. Sometimes we would get
470 a claim with ten million, or sometimes they would have four million. We would get the same money.

Q. What was the value of timber in that vicinity, say in February, 1910?

Objected to by defendants' counsel as immaterial.

A. Of course it depends a good deal upon the location of the claim but I would figure anyway about fifty cents a thousand.

Q. Fifty cents a thousand would be about the minimum?

A. Well, about an average. Of course that is for claims coming down to the river, so that a fellow could get out, if he had a claim way back, it would not be worth so much, and I figured about fifty cents a thousand.

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. How long did you say that you had been in the timber business in Oregon?

A. Well, close to twenty years.

Q. How many times have you been in this Brumbang- Creek Section?

A. I never was in it.

Q. You never were in there to look over the timber?

A. No,—I sold some timber in there though.

Q. You never have been in that section then?

A. No. I have been up North though, but I never was in this timber, but I sold some timber,—sold a bunch of timber in there.

471 Q. Now, of course the value of these claims here would depend somewhat on the location and accessibility would not they?

A. Sure, that is right, some claims are worth more than others.

Q. And where a man makes it a business of buying timber, he finds out the amount of timber on each claim does he not?

A. Yes sir.

Q. And estimates the value on the cruise of the timber?

A. Yes sir. That is the right way, one claim is worth more

than others, but I made an estimate and I would say that any timber in there was worth fifty cent- per thousand.

Q. Suppose it only had two or three million feet, it would not be worth eight hundred dollars?

A. Well, it is worth fifty cents per thousand.

Q. I say back in 1902?

A. Well, we estimated it at about five dollars an acre at that time.

Q. Without reference to the timber on it?

A. O, yes, referring to the timber on it.

Q. Of course, to give any estimate as to value of any particular claim, you would have to see the claim, and see the quality of timber?

A. Yes, that is right.

Q. You never saw any of these claims in dispute in this case?

A. I never saw any of them.

472 Q. Do you know anything about the quality or character of timber in that section of country,—whether a good deal of it is punky, or rotten?

A. Along the river, there is a lot of very poor timber, punky.

Q. Have you any idea what percentage was punky, or rotten?

A. No.

Redirect examination.

(Questions by Mr. JOHN McCOURT:)

Q. Timber in that region averages up with timber in other localities?

A. Yes sir. Along the river there is a lot of it that is punky, but back of it, it is good timber.

(Witness excused.)

T. B. NEWHAUSER is called as a witness for the government on rebuttal, and being first duly sworn, testifies as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. What is your business Mr. Newhauser?

A. I am in the investment business.

Q. Did you ever engage in the buying and selling of timber lands?

A. As a broker, yes sir.

Q. Are you in that business yet?

A. Yes.

Q. You know where the Brumbaugh River is in Lane County?

A. I know where it is, yes.

Q. How long have you been engaged in the buying and selling of timber land?

473 A. Ever since I resigned from the government service.

Q. You used to be in the government service did you?

A. Yes sir.

Q. When you were in the government service Mr. Newhauser, did you have any occasion to become acquainted with some timber land entries made by Stephen, Alice, and Ethel and Lucy La Raut, Edward Jordan, and few others on this Brumbaugh River?

A. I did.

Q. Now those are claims in controversyy in this suit,—did you ever buy and sell any timber land in that region?

A. No.

Q. How near is the nearest that you have bought and sold land of those lands here on Brumbaugh River?

A. I never bought or sold any in there, but we have listed some tracts in the immediate vicinity of the Brumbaugh River or Creek up in Lane County.

Q. Well, in your investment business, or timber land business, do you know the value of timber land in this locality?

A. I would say yes, I have a fair idea as to its value.

Q. Is there any difference in the value now as in February, 1910?

A. I would say yes.

Q. It is less now than it was then?

474 A. I would say that the value of timber is higher.

Q. Higher than it was in February, 1910?

A. Yes sir.

Q. I would like to have you give your opinion with reference to along the first of the year of 1910?

A. I should say probably from 75c. to \$1.00, that is in the open market.

Q. You would give seventy-five cents as the minimum value of timber in there?

A. The market price I would say,—that is a year ago.

Q. Depending upon the accessibility and quality of the timber, and the quality on the claim?

A. Well, I should say that price would be for good timber, good sound thrifty timber, not burnt or spotted and not scattering, but for a good growth of timber, entirely heavy sound and thrifty.

Q. What do you mean by "spotted" is that what they call punky?

A. No. Spotted is what they refer to when the tree stands in bunches, and long spaces between them, they call it spotted.

Q. Would the presence of this punk have some effect upon the price?

A. Oh, yes, certainly.

Q. You find that throughout all timber, more or less?

A. No, generally where you have a good elevation, a good high elevation, you do not find so much punk in young thrifty growth, you won't find so much punk. You generally find that in
475 older and mature timber.

Q. You do not know what the value of timber was in 1902?

A. No, I was not in the state at that time, and had not operated, or made any sales at that time.

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. You say that you never bought or sold any timber in this Brumbaugh Creek section?

A. No, never bought or sold any in that section.

Q. And of course, you never have been on the land or seen it?

A. No, I have never been on that land.

Q. Your estimate of seventy-five cents or a dollar a thousand is for good sound timber, and as you have already stated if the timber is punky or rotten, or spotted, as you called it, it would not be worth so much?

A. Certainly not.

Q. You do not know of any timber being sold in this Brumbaugh region for from seventy-five cents to a dollar per thousand do you?

A. No, I do not.

Q. Suppose it was shown that people were offering land in that section at thirty cents per thousand, would you consider that it was very much below what it was worth?

A. I should say that it was below the market value.

476 Q. Now, the market value depends a good deal, upon accessibility and the location of the land, does it not?

A. Yes, and it depends some times on the presence of a large company.

Q. That is, that helps to make the market, does not it?

A. No, it helps to spoil the market.

Q. It prevents people from buying, you mean?

A. Yes sir.

Redirect examination.

(Questions by Mr. JOHN McCOURT:)

Q. In this case, the Booth-Kelly Lumber Company had monopolized the timber held in that district?

A. I do not know whether the Booth-Kelly Lumber Company has monopolized the country there or not, Mr. McCourt, in fact, I do not know exactly where the Booth-Kelly holdings are.

Q. Well, you understand that the Booth-Kelly Lumber Company holds all of the available timber in that country down there, tributary to their mills?

A. Yes sir, that is my understanding.

Q. Is it not a fact that if any considerable quantity of timber could be secured in that locality, that purchasers could readily be secured at seventy-five — per thousand for good timber?

A. I should say yes, if a large quantity of timber could be secured.

477 Q. Well, would you consider a claim very much spotted that had from 6,350,000 to 7,300,000 on it?

A. Do you refer to a quarter section?

Q. Yes.

A. No, I would not say that was spotted.

Q. There would not be much room for spots on that?

A. Not much room for that.

(Witness excused.)

GEORGE SORENSON is recalled for further cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. I forgot to ask you if you had sold any land or knew of any being sold on this Brumbaugh Creek section, or anywhere in that vicinity?

A. Yes.

Q. Who was it sold to?

A. To the Storey Bracher Lumber Company.

Q. When?

A. About four years ago.

Q. What price did they pay?

A. I think about twenty-five cents per thousand. It was four years ago.

Redirect examination.

(Questions by Mr. JOHN McCOURT:)

Q. Is timber more value now than it was four years ago?

A. Yes.

Q. What per cent has it increased?

A. I should judge fifty per cent.

Q. You mean by that that it has doubled in value?

A. Yes.

478 Q. That would be one hundred per cent?

A. Yes it was worth twenty-five cents then, it is worth fifty cents now.

(Witness excused.)

M. A. MARTIN is called as a witness for the government, and being first duly sworn, testified as follows:

Direct examination.

(Questions by Mr. JOHN McCOURT:)

Q. Where do you live Mr. Martin?

A. Portland.

Q. How long have you lived in Portland?

A. About four years.

Q. Where did you live prior to that time?

A. At Hood River.

Q. What is your business?

A. The timber business and cruising for years.

Q. How many years have you cruised timber?

A. Fifteen years.

Q. Were you ever engaged in the timber business elsewhere than in Oregon?

A. I cruised in Michigan.

Q. How long have you been engaged in the timber business in Oregon, buying and selling timber?

A. Three years.

Q. Prior to that time, you were a cruiser?

A. Prior to that time, I was a cruiser.

Q. In your capacity as cruiser, did you have an opportunity to ascertain the various quantities of timber in the various districts in Oregon?

A. Well, I feel that I know considerable about it, yes.

479 Q. You were familiar with the sales that were being made and the value placed upon timber during this time?

A. Yes to a great extent.

Q. Have you ever cruised, or bought, or sold, any timber down in Lane County?

A. Yes sir.

Q. Are you familiar with what is known as the Brumbaugh River District?

A. Well, I made one trip in there to cruise a section.

Q. What section was that?

A. Section 36, 23-2.

Q. West?

A. Yes.

Q. Now that would not be very far from twenty-one and twenty-two south of two and three West?

A. It would be right south of twenty-two 2.

Q. You were in township what?

A. Section 36, twenty-three 2.

Q. That would be about six miles south of that?

A. Yes.

Q. How long were you in that vicinity at that time?

A. I think about six days.

Q. When was that?

A. Well, I cannot tell you definitely, it was about a year ago last May.

Q. Did you make a general observation of the *time* in that vicinity and that locality at that time, along the creek,—the
480 standing timber?

A. Yes, as far as I could see.

Q. Were you acquainted with the value of timber in that locality in 1902 or do you know now the value of timber in 1902, in there?

A. No, I cannot say.

Q. Do you know the value of timber in Oregon in localities similarly situated as to accessibility?

A. Well, yes to a certain extent.

Mr. TANNER: You were speaking of 1902?

A. Yes.

Q. What was the value of timber at that time in that locality, say a timber running from four to ten million feet of timber?

A. Well, I have known timber similarly situated to be bought for twenty-five cents per thousand.

Q. At that time were you in the habit of buying for a flat sum

for a claim, rather than for the number of feet carried by a claim, or how was it?

A. Well, yes, that was my observation.

Q. In late years you bought on the stand of timber and the quantity per thousand, ordinarily?

A. Yes sir.

Q. What was the value of timber in that locality, say in February, 1902?

A. Well, it is kind of difficult.

Q. That would be about the time that you were down there?

A. We sold that section for about fifty cents.

Q. That was a fair value of it at that time?

A. Well, that was all that we could get for it.

Q. Did you sell it to Booth-Kelly Lumber Company?

481 A. No.

Q. Do you know of any other claim being sold in there at that time?

A. I do not.

Q. Either before or since?

A. No.

Q. How much was there,—you figured it by the section?

A. Yes.

Q. You sold the entire section at that rate?

A. Yes.

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. How long have you been in this country did you say Mr. Martin?

A. In Portland?

Q. In Oregon, in this section of the country.

A. I have been here nearly twelve years.

Q. Were you in this part of the country during 1902?

A. Well, I did considerable work out of Portland about that time.

Q. You say that you have been in the cruising business about three years in Oregon?

A. No, I have been in the timber business about three years.

Q. Buying and selling timber?

A. Well, to a certain extent, yes.

Q. For yourself or for other people?

482 A. Well, for myself and other people too.

Q. Do you own any timber now?

A. Yes.

Q. Where?

A. I have got an interest in the Siletz.

Q. How much is there of it?

A. I do not know.

Q. A large tract.

A. Just a single claim.

Q. Where was this section that you spoke about that you cruised with reference to Brumbaugh Creek or River?

A. Well, it is quite near the head I believe. I know that I swung up the Brumbaugh and went up the Creek or a branch of the Brumbaugh. It is on the head of the creek.

Q. Well, upon the mountain was it?

A. Yes.

Q. Did you go down the river when you came out?

A. Yes.

Q. Down to Coburg?

A. No. I came back down the Brumbaugh, and went on to Cottage Grove.

Q. Did you notice the character of the timber down along the stream?

A. In a general way, yes.

Q. What is the fact as to more or less of it being punky and rotten?

A. Well, I suppose there is. This section that I cruised
483 had lots of defects in it.

Q. That effects the value of a claim more or less, does not it?

A. Well, yes it does.

Re-direct examination.

(Questions by Mr. JOHN McCURT:)

Q. That was one of the reasons that you could not get more than fifty cents a thousand, was it not?

A. Well, no,—it might have been, but I do not think it was though. The punk was thrown out, when we cruised.

Q. You cruised sound timber?

A. Yes.

Q. That is the ordinary way of cruising timber the punky stuff is thrown out.

A. Yes.

Q. Now, this claim that you have, would that be any more accessible to mills or the market, than land situated in twenty-one and twenty-two south of two and three?

A. I think land in 21 and 22 south 2 West would be probably handier to railroad facilities.

Q. Yours is a little more remote?

A. Yes.

Q. Now, land situated, say in the southeast quarter of section 2, township 18, south of range 1 east, in 1902, would land so situated be any more valuable than these lands in 21 and 22 south of range two west?

A. Well, I cannot say that there was much difference in
484 value.

Q. A claim that brought \$2300.00 in one of those localities then, would probably be about the same price as another?

A. Well, I suppose somewhere around there, yes.

Q. That is where I refer to.

A. Yes.

Recross-examination.

(Questions by A. H. TANNER:)

Q. You never saw these particular claims involed in this suit?

A. I do not know the description of them at all.

Q. Well they are in section 28, township 21 south of 2, and in section 2, township twenty two, south range 2, and section 26, township 21, south range 3?

A. Well, I cannot say, the way I went.

Q. That is you mean, you were not able to pick out these particular claims to testify anything about them.

A. I paid no attention. I did not look for any corner, because my business was to go on.

Q. You do not know anything about these claims themselves?

A. No.

(Witness excused.)

C. W. MEAD is called as a witness for the government on rebuttal, and being first duly sworn, testified as follows:

Direct examination.

485 (Questions by Mr. JOHN McCOURT:)

Q. Where do you live Mr. Mead?

A. I live in Portland.

Q. How long have you lived in Portland?

A. About twenty years.

Q. What has been your business for several years last past?

A. Timber cruising and inspecting timber.

Q. In your experience as a cruiser, have you become acquainted with the value of timber?

A. Yes, in a general way I have.

Q. You have had personal knowledge of numerous tracts in the sale and purchase of timber?

A. Yes.

Q. Were you engaged in that business in 1902?

A. Yes sir.

Q. Did you ever do any cruising in the locality of these tracts on Brumbaugh River?

A. Only in a general way. I made a trip up this creek one time to see what the timber was in there in a general way. I did not look at any particular piece, I was only in there about four days.

Q. When was this?

A. That was about ten years ago, I cannot tell exactly.

Q. Did you go in there for your own personal information?

A. Yes, my own.

Q. You say that you have a general idea of the character of the timber in that locality?

A. Yes I had at that time.

486 Q. Do you know what the value of timber was in that locality in 1902?

A. Well, only judging from other localities, similar to this, that is all.

Q. We, so judging it, what is your opinion as to the value of timber in that locality upon a claim running from four to six and ten million feet per quarter section?

A. At that time, I remember it, timber could be bought from twenty-five to fifty cents per thousand,—that was the asking, that is for good timber,—I mean for fir and cedar. Of course, there was quite a little hemlock in there at that time, hemlock was not considered worth hardly anything.

Q. What was the market value of timber say in there in 1901, for good timber?

A. Well, I think it was about double what it was before when I was in there.

Q. From 50c to \$1.00?

A. Yes sir.

Cross-examination.

(Questions by Mr. A. H. TANNER:)

Q. Have you bought any timber?

A. Not in that locality.

Q. You never saw these claims in dispute?

A. Not that I know of. I cannot say that I was ever across them,—I just went up through the valley,—up one side and down the other.

Q. You say that your impression is that in 1902, the asking price was from 25c to 50c per thousand?

A. Yes sir.

Q. That is what people who had timber to sell wanted to get for it?

A. That is what I understood at that time, yes sir.

Q. You do not know whether the buyers gave that or not do you?

A. I do not know.

Q. If a man has a piece of timber to sell, he generally asks a pretty good price for it, don't it.

A. Some times he does, and some times he don't.

(Witness excused.)

Plaintiff rests. Defendant rests.

UNITED STATES OF AMERICA,

District of Oregon, ss:

I, Geo. A. Brodie, Examiner of the above entitled court do hereby certify that on the 19th day of December, 1910, the parties herein appeared before me at the U. S. Grand Jury Room in the City of Portland, Multnomah County, Oregon, in the District of Oregon, at the hour of 1:30 P. M., the complainant, the Government of the United States, appearing by Mr. John McCourt, U. S. Attorney for Oregon, and the defendants appearing by Messrs. A. H. Tanner and A. C. Woodcock, and thereupon the taking of testimony herein on behalf of the respective parties was begun before me, it being agreed

by and between the parties that said testimony should be taken
down by me in shorthand and afterwards transcribed into
488 typewritten script and certified as being a true and correct
transcript, and when so taken transcribed and certified that
the same should be respectively, the signing of the depositions by
the respective witnesses to all intents and purposes as if duly
and regularly subscribed by the witnesses respectively, the signing
of the depositions by the respective witnesses, being expressly waived
by the parties. That thereafter the taking of testimony was ad-
journed from day to day until the 18th day of January, 1911, at
which time the taking of testimony herein was completed.

I further certify that before proceeding with the taking of testi-
mony of the respective witnesses herein they and each of them were
by me duly sworn to tell the truth the whole truth and nothing
but the truth in answer to interrogatories to be propounded to them
by counsel.

I further certify that the foregoing is a true and correct tran-
script of the testimony and proceedings had before me herein and
of the whole thereof.

Dated this 9th day of March, 1911.

GEO. A. BRODIE,
U. S. Examiner.

[Endorsed:] Filed March 10, 1911. G. H. Marsh, Clerk District
of Oregon.

And afterwards, to wit, on the 8th day of April, 1912, there was
duly filed in said Court, a Petition for Appeal in words and figures
as follows to wit:

489 (Petition for Appeal.)

In the District Court of the United States for the Ninth Judicial
Circuit and District of Oregon.

THE UNITED STATES OF AMERICA, Complainant,

VS.

BOOTH-KELLY COMPANY, a Corporation; EDWARD JORDAN, Stephen
A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut,
Defendants.

The United States of America, complainant above named con-
ceiving itself aggrieved by the decree entered in the Circuit Court of
the United States for the above mentioned Circuit and District in the
above entitled cause on the 9th day of October, 1911, hereby appeals
from said decree to the United States Circuit Court of Appeals for
the Ninth Circuit, for the reasons specified in the assignment of
errors which is filed herewith, and prays that the appeal be allowed,
and that a transcript of the records, proceedings and papers upon
which said decree was made, duly authenticated, may be sent to the

United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner prays that said decree may be reviewed and reversed.

Dated April 6, 1912.

JOHN McCOURT,
United States Attorney for the District of Oregon,
and Solicitor for Complainant.

[Endorsed]: Petition for Appeal. Filed Apr. 8, 1912. A. M. Cannon, Clerk U. S. District Court.

490 And afterwards, to wit, on the 8th day of April, 1912, there was duly filed in said Court, an Assignment of Error in words and figures as follows to-wit:

[Assignments of Error by Plaintiff.]

In the District Court of the United States for the Ninth Judicial Circuit and District of Oregon.

THE UNITED STATES OF AMERICA, Complainant,
vs.

BOOTH-KELLY COMPANY, a Corporation; EDWARD JORDAN, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

The United States of America, complainant above named, asserts that in rendering the decree in the above entitled cause on the 9th day of October, 1911, the said Circuit Court of the United States for the District of Oregon for the Ninth Circuit, erred in the following particulars to-wit:

First: In dismissing the bill of complaint, herein as to the four patents bearing date August 3, 1904, and each of them, and the lands described therein, issued respectively to Stephen A. La Raut, Alice La Raut, Ethel La Raut and Lucy La Raut, and described in the bill of complaint. This was error because the evidence in the case sustained, proved and established the conspiracies, frauds, irregularities and notice thereof complained of, alleged and charged in the bill of complaint, in connection with the entries of
491 said lands and the conveyances thereof.

Second: In failing and refusing to make and enter a decree herein in accordance with the prayer of complainant's bill of complaint, declaring null and void the said patents issued respectively to Stephen A. La Raut, Alice La Raut, Ethel La Raut and Lucy La Raut, and dated August 3, 1904, and setting aside, revoking and cancelling said patents and directing that the several deeds of conveyance from said entrymen to the defendant Booth-Kelly Company, for the lands described in said patents, be delivered up and surrendered for cancellation and cancelled, and ordering and decreeing that the lands embraced in the several patents to be the perfect property of complainant free and clear of all claims of the defendants, and

ordering, adjudging and decreeing that the defendant Booth-Kelly Company execute and deliver to complainant a good and sufficient deed or deeds conveying the said lands described in said patents free and clear of all liens, incumbrances, outstanding claims or clouds whatever, to the complainant in fee simple absolute. The failure and refusal of the Court in the respect mentioned in this assignment was error because the evidence in the case sustained, proved and established the conspiracies, frauds, irregularities and notice thereof complained of, alleged and charged in the bill of complaint, in connection with the entries of said lands and the conveyances thereof.

Third. In dismissing the bill of complaint as to the said four patents of August 3, 1904, and the land described therein, instead of rendering and entering a decree as to said patents and 492 each of them, and said lands described therein, and the conveyances of said lands by the several entrymen to the defendant Booth-Kelly Company, as prayed for by complainant in its bill of complaint, the conspiracies, frauds, irregularities and notice thereof set forth in the bill of complaint, having been clearly and fully sustained, proved and established by the evidence introduced and presented to the court by complainant.

JOHN McCOURT,

*Solicitor for Complainant and United States Attorney
for the District of Oregon.*

[Endorsed:] Assignment of Error. Filed Apr. 8, 1912. A. M. Cannon, Clerk U. S. District Court.

And afterwards, to wit, on the 8 day of April 1912, there was duly filed in said Court an Order Allowing Appeal in words and figures as follows to-wit:

[Order Allowing Plaintiff's Petition for Appeal.]

In the District Court of the United States for the Ninth Judicial Circuit and District of Oregon.

THE UNITED STATES OF AMERICA, Complainant,

vs.

BOOTH-KELLY COMPANY, a Corporation; EDWARD JORDAN, STEPHEN A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

493 Now on this day came the United States of America, complainant herein, by its counsel John McCourt, United States Attorney for the District of Oregon, and presented its petition for an appeal, accompanied by an assignment of errors, which petition, upon consideration of the Court is hereby allowed, and the Court hereby allows an appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Portland, Oregon, this 8th day of April, 1912.

R. S. BEAN, Judge.

[Endorsed]: Order allowing Appeal. Filed Apr. 8, 1912. A. M. Cannon, Clerk.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, a Citation on Appeal in words and figures as follows to wit:

Citation on Appeal to the Defendants.

UNITED STATES OF AMERICA,
District of Oregon, ss:

To Booth-Kelly Company, a corporation; Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Greeting:

Whereas, The United States of America has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered on October 9, 1911, in the Circuit Court of 494 the United States for the District of Oregon, in your favor, and has given the security required by law; you are therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any they be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 8th day of April, in the year of our Lord, one thousand, nine hundred and twelve.

R. S. BEAN, *Judge.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

Due and legal service of the within citation is hereby acknowledged and accepted this 8th day of April, 1912, within Multnomah County, State of Oregon, by receipt of a duly certified copy thereof.

A. H. TANNER,
*Of Attorneys and Solicitors for the Defendants,
Booth-Kelly Co., a Corporation; Stephen A.
La Raut, Alice La Raut, Ethel M. La Raut
and Lucy La Raut.*

[Endorsed:] Citation on Appeal. Filed Apr. 8, 1912. A. M. Cannon, Clerk.

495 And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, a Petition for Appeal in words and figures as follows to wit:

[Petition of Defendant Booth-Kelly Co. for Appeal.]

In the Circuit Now District Court of the United States for the 9th Judicial Circuit and District of Oregon.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD JORDAN, STEPHEN A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

To the Honorable Robert S. Bean, District Judge, and one of the Judges of the above entitled Court, presiding therein :

The above named defendant, the Booth-Kelly Lumber Company, a corporation, considering itself aggrieved by that part of the order and decree made and entered in the above entitled cause and Circuit Court on the 9th day of October, 1911, wherein and whereby it was and is ordered, adjudged and decreed that the patent heretofore, to-wit, on the 3rd day of August, 1904, issued to Edward Jordan for Lots 7, 8, 9 and 10, of Section 2, in Township 22, South Range 2 West, Willamette Meridian, and the deed from said Edward Jordan and wife to the said defendant the Booth-Kelly Lumber Company to the said land, which said patent and deed are particularly mentioned and referred to in the plaintiff's bill of complaint, 496 be and are set aside, cancelled and held for naught, and that the plaintiff herein be decreed to be the owner of said real property, free and clear of all claims of said defendants, and that the said defendant the Booth-Kelly Lumber Company execute and deliver to the plaintiff a good and sufficient deed conveying said land to the said plaintiff in fee simple absolute, and that in case it shall fail, neglect or refuse to make such deed that said decree should operate as such deed of conveyance, for the reasons set forth in the assignment of errors which is filed herewith, and it prays that this, its petition for its said appeal, may be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit.

A. C. WOODCOCK, AND

A. H. TANNER,

Solicitors for Defendant the Booth-Kelly Lumber Co.

[Endorsed:] Petition for Appeal. Filed Apr. 8, 1912. A. M. Cannon, Clerk U. S. Court.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, Assignment of Error in words and figures as follows, to wit:

[*Defendant's Assignments of Error.*]

In the Circuit Now District Court of the United States for the 9th Judicial Circuit and District of Oregon.

497

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD JORDAN, STEPHEN A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants.

Comes now the defendant the Booth-Kelly Lumber Company, a corporation, and alleges and files herein the following assignment of errors, upon which it will rely upon the prosecution of the appeal in the above entitled cause from that part of the decree from which the appeal is taken:

I.

The Court erred in entering said decree or any decree in this cause against this defendant, setting aside, cancelling and annulling the said patent issued by the plaintiff to Edward Jordan, for Lots 7, 8, 9 and 10, of Section 2, Township 22, South of Range 2 West, of the Willamette Meridian, and the deed from said Edward Jordan and wife to this defendant.

II.

The Court erred in not dismissing the plaintiff's bill of complaint as to said real property so patented to said Jordan by the said plaintiff, and by him deeded to this defendant.

III.

The Court erred in not holding and finding in and by its said decree that the said patent so issued to said Edward Jordan, and the entries and proceedings relating thereto, were taken and had in good faith, and in not holding and reciting that the deed from said Edward Jordan and wife to this defendant was made in good faith, and without any intent to defraud the plaintiff out of said land.

A. C. WOODCOCK AND
A. H. TANNER,

Solicitors for Defendant the Booth-Kelly Lumber Co.

[Endorsed:] Assignment of Errors. Filed Apr. 8, 1912. A. M. Cannon, Clerk.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, an Order Allowing Appeal in words and figures as follows to wit:

[Order Allowing Defendant's Appeal.]

In the Circuit Now District Court of the United States for the 9th
Judicial Circuit and District of Oregon.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD JORDAN, STEPHEN A.
La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut,
Defendants.

On motion of A. H. Tanner, Esq., Solicitor and of counsel
499 for defendants, it is Ordered that an appeal to the United
States Circuit Court of Appeals for the 9th Circuit, from that
part of the final decree heretofore filed and entered herein, as set
forth in the petition for said appeal, be and the same is hereby
allowed, and that a certified transcript of the record, testimony, ex-
hibits, stipulations and all proceedings herein be forthwith trans-
mitted to the United States Circuit Court of Appeals.

It is further ordered that the bond of said appeal be fixed at Two
Hundred and Fifty Dollars, the same to act as a supersedeas bond,
and also as a bond for costs and damages on appeal.

Dated April 8, 1912.

R. S. BEAN, *Judge.*

[Endorsed:] Order Allowing Appeal. Filed Apr. 8, 1912. A.
M. Cannon, Clerk U. S. District Court.

500 And Afterwards, to wit, on the 8 day of April, 1912, There
was duly filed in said Court, a Bond on Appeal in words and
figures as follows to wit:

[Defendant's Bond on Appeal.]

In the Circuit Now District Court of the United States for the 9th
Judicial Circuit and District of Oregon.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD JORDAN, STEPHEN A.
La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut,
Defendants.

Know all men by these presents, That the Booth-Kelly Lumber
Company, a corporation, as principal and Geo. H. Kelly as surety
are held and firmly bound unto the United States of America,
plaintiff, above named in the full and just sum of Two Hundred
and Fifty (\$250) Dollars to be paid to it, its successors or assigns
for which payment well and truly to be made, we bind ourselves,

our heirs, executors and administrators, jointly and severally, firmly by these presents.

Whereas lately at a session of the above entitled court in a suit pending in said court between the United States of America, plaintiff, and above named defendant, a decree was rendered in part against the said defendant, the Booth-Kelly Lumber Company, and said company having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the 9th Circuit to reverse that part of the said decree so rendered against the said Booth-Kelly Lumber Company, defendant aforesaid, and a citation is about to be issued citing the plaintiff, the United States of America, to be and appear at the United States Circuit Court of Appeals for the 9th Circuit to be holden at San Francisco, California.

Now the condition of the above obligation is such that if the said Booth-Kelly Lumber Company shall prosecute its said appeal to effect, and shall answer all damages and costs as may be
501 awarded against it, if it fails to make good its plea, then the above obligation is to be void; otherwise, to remain in full force and virtue.

BOOTH-KELLY LUMBER COMPANY,
By A. H. TANNER, *Its Attorney.*
GEO. H. KELLY.

STATE OF OREGON,
County of Multnomah, ss:

I, Geo. H. Kelly, being first duly sworn, say that I am the surety named in the foregoing bond, and that I am a resident and freeholder in the State of Oregon and am worth the sum of Five Hundred (\$500) Dollars over and above all my debts and liabilities, and owner of property exempt from execution.

GEO. H. KELLY.

Subscribed and sworn to before me this 8th day of April, 1912.
[SEAL.] ALBERT H. TANNER,
Notary Public for Oregon.

[Endorsed:] Bond on Appeal. Filed Apr. 8, 1912. A. M. Cannon, Clerk U. S. District Court.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, a Citation on Appeal in words and figures as follows to wit:

[*Citation on Appeal to Plaintiff.*]

UNITED STATES OF AMERICA,
District of Oregon, ss:

To the United States of America, Greeting:

502 Whereas, The Booth-Kelly Lumber Company has lately appealed to the United States Circuit Court of Appeals for
18—258

the Ninth Circuit from that part of a decree rendered in the Circuit Court of the United States for the district of Oregon on the 9th day of October, 1911, in your favor, and has given the security required by law; You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 8 day of April, in the year of our Lord, one thousand, nine hundred and twelve.

R. S. BEAN, *Judge.*

UNITED STATES OF AMERICA,

State of Oregon, County of Multnomah, ss:

Due and legal service of the within citation is hereby accepted, admitted and acknowledged at Portland, Oregon, this 8 day of April, 1912.

JOHN McCOURT,
United States Attorney for Oregon.

[Endorsed:] Citation on Appeal. Filed Apr. 8, 1912. A. M. Cannon, Clerk U. S. Court, Oregon.

503 [Endorsed:] Printed Transcript of Record. Filed Sept. 25, 1913. F. D. Monckton, Clerk.

504 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA
Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, De-
fendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and
Appellant,

vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE NINTH CIRCUIT.505 *Index to Proceedings Had in the United States Circuit Court
of Appeals for the Ninth Circuit.*

No. 2175.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA
Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, De-
fendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and
Appellee,

vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

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506 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

UNITED STATES OF AMERICA, Appellant,

VS.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA Raut, Aliee La Raut, Ethel M. La Raut, and Lucy La Raut, Appellees.

BOOTH-KELLY LUMBER COMPANY, Appellant,

VS.

UNITED STATES OF AMERICA, Appellee.

[*Stipulation re Quantities of Timber on Certain Lands, etc.*]

It is hereby stipulated and agreed by and between the parties, that upon the taking of testimony in said cause before the Examiner appointed to take and report said testimony, *that* the following stipulation was entered into by the parties to this cause, but was omitted from the record by the Examiner:

‘It is stipulated and agreed

cruise of the land involved in this controversy made by Mr. Willoughby, cruiser for the Booth-Kelly Lumber Company, in the regular course of cruising the lands of said company, about one year prior hereto, showed the said lands to have thereon the following quantities of timber, to wit:

507	Ethel Lewis claim.....	7,700,000 feet;
	Lucy La Raut claim.....	3,600,000 feet;
	Stephen La Raut claim.....	6,350,000 feet;
	Alice La Raut claim.....	6,750,000 feet;
	Edward Jordan claim.....	9,400,000 feet;

and that a cruise of said land was made by J. E. O'Rourke a timber cruiser in the employ of the Government, in October of this year, under instructions of the Chief of Field Division, to ascertain the approximate quantities of timber on the several claims, rather than an accurate cruise of the actual quantity of timber thereon, and that the cruise of the said O'Rourke showed the following quantities of timber upon the respective claims:

	Ethel Lewis claim.....	10,250,000 feet;
	Lucy La Raut claim.....	4,100,000 feet;
	Stephen La Raut claim.....	7,000,000 feet;
	Alice La Raut claim.....	7,300,000 feet;
	Edward Jordan claim.....	14,000,000 feet.

It is further stipulated and agreed by and between the parties hereto that the receipts mentioned and referred to on Page 434 of the Transcript of Record herein, were thereafter and before the

taking of the testimony in said cause was closed, produced and exhibited to the Solicitor for complainant, in compliance with his request set forth on Page 434 of the record, and that said Solicitor did not introduce the same in evidence, and stated that he did not care for the same. Said receipts are hereto attached and
 508 it is hereby stipulated and agreed may be considered by this court as a part of the record in this cause, together with the stipulation above set forth.

Dated at Portland, Oregon, this 28th day of September, 1921.

JOHN McCOURT,

United States Attorney for the District of Oregon.

A. H. TANNER,

Of Solicitors for Defendants.

EUGENE, OR., Feb'y 3, 1910.

Received of The Booth-Kelley Lumber Co. Fifty and no/100 Dollars In full payment for all balance due me on account of the S. E. ¼ Sec. 26, Tp. 21, S. R. 3 West.
 \$50.00.

ALICE LA RAUT.

EUGENE, OR., Feb'y 3, 1910.

Received of The Booth-Kelly Lumber Co. Fifty and no/100 Dollars In full payment for all balance due me on account of the N. E. ¼ Sec. 26 Tp. 21 S. R. 3 West.

S. A. LA RAUT.

[Endorsed:] Stipulation re quantities of timber on certain lands, etc. Filed Oct. 4, 1912, F. D. Monckton, Clerk.

509 United States Circuit Court of Appeals for the Ninth Circuit.

At a Stated Term, to-wit, the October Term, A. D. 1912, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-room Thereof, in the City and County of San Francisco, in the State of California, on Friday, the Eleventh Day of October, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present:

Honorable William B. Gilbert, Circuit Judge,
 Honorable Erskine M. Ross, Circuit Judge,
 Honorable William W. Morrow, Circuit Judge.

No. 2175.

THE UNITED STATES OF AMERICA, Appellant,
vs.
BOOTH-KELLY LUMBER COMPANY, etc., et al., Appellees,
and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Order of Submission.

Ordered, above-entitled appeals argued by Mr. United States Attorney John McCourt, counsel for the United States of America, and by Mr. Albert H. Tanner, counsel for the Booth-Kelly Lumber Company, a Corporation, et al., and submitted to the Court for consideration and decision.

510 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.
BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA Raut, Alice La Raut, Ethel M. La Rout, and Lucy La Raut, Defendants and Appellees,

And

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and Appellant,
vs.
THE UNITED STATES OF AMERICA, Plaintiff and Appellee

Opinion U. S. Circuit Court of Appeals.

John McCourt, United States Attorney for Oregon.
A. C. Woodcock and Albert H. Tanner, for the Appellees and Booth-Kelly Lumber Co., Appellant.

Before Gilbert, Ross, and Morrow, Circuit Judges.

On May 24, 1910, the United States brought a suit in the court below to cancel five patents of land which had been issued under the Timber and Stone Act, on the ground that the initial applications of the patentees had been fraudulently made by them for the use and benefit of the Booth-Kelly Lumber Company, and with the

511 understanding at the time when they were made that the entrymen should each convey the land so entered by him to said company. The bill alleged that that company paid and advanced all of the fees, costs and expenses and purchase price of said land, and paid to each entryman \$100., and received from each a deed. The entrymen were Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut (now Ethel M. Lewis) and Lucy La Raut; and they were made co-defendants with the Booth-Kelly Lumber Company. A decree was taken pro confesso against Jordan. On September 21, 1910, all the other defendants answered the bill denying that the Lumber Company furnished any of the purchase money, fees, costs or expenses of acquiring the land, and denying the allegations of fraud on the Timber and Stone Act.

The answer alleged that on or about July 22, 1902, the Lumber Company purchased the land entered by Jordan for the sum of \$550., which was actually advanced and paid to and for his use and benefit, and received a warranty deed from him therefor, relying upon the final receipt for said land, and believing that all the proceedings anterior thereto were bona fide, etc.; that on May 7, 1907, Stephen, Alice, Ethel and Lucy La Raut, by virtue of the patents issued to them, were seized and possessed of full legal and equitable ownership of the land granted by said patents, and that on said day the Lumber Company purchased the land described in said patents and each of the patentees received therefor the sum of \$600., which sum was actually advanced and paid to and for each of them, relying upon the patents, etc. And there is in the answer this allegation by the Lumber Company; "That this defendant is informed and believes, and therefore alleges that after the said entries mentioned in said bill were made by said several
512 entrymen, charges were made and filed with the complainant's officials in the Interior Department whose duty it was to investigate and determine the same, that said entries were fraudulent in character, and were made for the benefit of this defendant, and that said charges were fully investigated by the Interior Department for the purpose of ascertaining the truth or falsity of said charges, and to determine whether patents should be issued upon said entries, or whether the same should be cancelled and that such proceedings were had in said matters that said several entries were fully investigated, by complainant's officials charged with that duty, and testimony and affidavits were taken upon said investigation, and the complainant and said entrymen were duly represented at said hearing and investigation, and that upon a full investigation and hearing upon said charges, and with full knowledge of all the facts, it was found and determined by the said officials that said entries were not fraudulent, and that the irregularities in said entries, if any, were not of sufficient gravity to require or justify the cancellation of said entries, and ordered that patents issue upon said entries for said land, and that patents were thereupon issued therefor, as alleged in said bill of complaint." After a replication had been filed and at the beginning of the taking of testimony before an examiner, on December 19, 1910, the Lumber Company, Lucy La Raut

and Ethel M. La Raut obtained permission to amend their answer "so as to admit that the defendant the Booth-Kelly Lumber Company is the holder of the legal title to the lands entered by and patented to Ethel M. La Raut and Lucy La Raut, but denying that it is the equitable owner of said land, and alleging affirmatively that said Ethel M. La Raut, now Ethel M. Lewis, and Lucy La Raut ever since said patents were issued to them have been and now are the equitable owners of said land, and that the deeds made by them to the Booth-Kelly Lumber Company were intended to be and were in fact mortgages to secure the payment of certain advances made and to be made to them by said company, to enable them to enter and pay for said land and for other purposes." On the issues so made and the testimony, the court below entered a decree cancelling the patent which had been issued to Jordan and dismissing the bill as to the other entries. From that decree both the complainant and the Lumber Company have appealed.

GILBERT, *Circuit Judge*, after stating the case:

The evidence shows that some months prior to the date of the entries, and some time during the years 1901 and 1902, the Lumber Company had the land in controversy cruised; that the company was acquiring lands in the vicinity of these lands during those years; that at that time and until 1907, R. A. Booth was the manager of the company; that between January, 1902 and January, 1903, J. H. Booth was secretary of the company and was the receiver of the United States Land Office at Roseburg, Oregon; that John F. Kelly was the Vice-President of the company, and that he, under the direction of R. A. Booth, attended too the purchase of lands for the company; that George Kelly, a director of the corporation, had charge of its sawmills, and was manager to succeed R. A. Booth in 1907; that at the time of the entries in controversy the company had sawmills at Saginaw, Coburg, Wendling and Springfield, Oregon, and that they owned and
514 acquired large tracts of land in the vicinity of those mills; that R. A. Booth is the brother-in-law of Stephen, Ethel and Lucy La Raut, and that Alice La Raut is Stephen La Raut's wife; that at the time when the entries were made, Stephen and Ethel La Raut and Edward Jordan were in the employment of the Lumber Company, and they "were very poor at that time"; that F. H. Brumbaugh was a cruiser in the employment of the Lumber Company and that at the request of John F. Kelly he showed the entrymen and entrywomen their respective claims. The records of the Land Office show that all the entries were filed in February, 1902, that the final proofs were made on May 7 and May 8, 1902, that the patents issued on August 3, 1904, and that upon the request of John F. Kelly, the patents were delivered by the officers of the Roseburg Land Office to Frank E. Alley.

As to the main issue in the case, which is whether the lands in controversy were entered pursuant to an understanding or agreement between the applicants and the Lumber Company, whereby

the latter was to acquire the same, the oral testimony is conflicting. Jordan testified, and the court below found, that he had such an understanding and agreement, and that he entered the land at the instance of one of the officers of the Lumber Company, upon the promise of the payment of \$100 to him for his service in so doing. Mrs. Applestone, a daughter of Alice La Raut, testified that her mother told her that she had taken up a claim for R. A. Booth, and was to be paid \$100 for her claim, that she was paid that sum,

and that Mr. Booth was to pay her expenses, and did so.
515 She testified also that her step-father Stephen La Raut took up his claim for the same reason that her mother did, but she was unable to say whether it was he or her mother who told her so, and that her mother told her that R. A. Booth had asked her, her step-father and Ethel to take up claims and that her mother said that her step-father had received \$100 for doing so. She testified further that her mother got \$50 more eight or nine months before the time when the witness gave her testimony. There was no contradiction of this testimony by either Stephen La Raut or his wife. They were not called as witnesses, nor were their depositions taken. Mrs. Applestone was apparently a disinterested witness, and no reason is suggested why her testimony should not be given full credence. Ethel and Lucy La Raut testified in the main in harmony with the testimony of R. A. Booth to the effect that the four entries of the La Rauts were made under an agreement with R. A. Booth, who was their relative, and the then manager of the Lumber Company, by which the Lumber Company was to pay the government price for the land and all the expenses incident to the entries and keep an account thereof, the repayment of which to the company Mr. Booth guaranteed, and in pursuance of which and as security therefor he took to himself the deeds to the lands which they entered. And there was testimony that in 1910, when Stephen La Raut and his wife desired to remove to Alberta, Canada, they sold their claims to the defendant company for \$50.00 each in addition to the \$100 they had each received, a price which was satisfactory to them and that the other two claims still
516 belong to Ethel and Lucy La Raut, the company holding the title as security. The court below found that the Lumber Company acquired by purchase the claims of Stephen La Raut and wife, and that it holds the title to the other two claims only as security for the advances made to Ethel and Lucy La Raut.

From the conflicting parol testimony which the record presents, we turn to the evidence shown by contemporaneous entries in the books and records of the Lumber Company, and to facts and circumstances established thereby which do not depend upon human memory for support, and which cannot be contradicted. The following facts are undisputed. The La Rauts, together with Jordan, who was in the employment of the Lumber Company, made their applications for timber claims at the same time, and the company paid their travelling expenses to and from Roseburg and all incidental expenses. The company paid for all the publications of notice and charged the expense thereof to its stumpage account and

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made no charge therefor at any time in its books against the individual entrymen. The company paid the purchase price of the lands and all the fees, travelling expenses and other expenses incidental to final proof. The final proofs were made in May, 1902, and in July following each of the entrymen executed and delivered a deed of the land. Jordan's deed, and probably all of the deeds, were executed to the company. The deeds from the La Rauts having been subsequently destroyed, the testimony leaves it uncertain whether they were executed to the company or to R. A. Booth. At the time when those deeds were executed, each entryman received the sum of \$100. The deed from Jordan was not recorded until September 6, 1907. The La Raut deeds were never recorded, but in the latter part of 1904 or early in 1905, at about the time of the investigation by the Government of land frauds in Oregon, those deeds were returned to the makers and destroyed. Ethel and Lucy La Raut made other deeds in 1907, at which time they were each paid \$25. On February 3, 1910, Stephen La Raut and his wife made a deed of their lands to the company, and were each paid \$50. The entrymen of the claims in controversy never saw the lands excepting at the time when they viewed them prior to making their entries, and it is admitted that they never made any effort to dispose of them, never inquired about the value of them, or the amount of timber thereon, and made no inquiry as to the expenses of the entries or the payment of taxes thereon, or assumed any control or ownership of the lands. The Lumber Company on its books charged itself with all expenses in relation to these lands from and after the time when it caused the same to be cruised, shortly before the entries were made. When the final proofs had been taken and the lands had been paid for, individual accounts were opened under the name of each of the entrymen, in which were charged the payment of the purchase price of \$400 for the land, and a payment of \$100 to each entryman, and each account was balanced by a credit of \$500 to stumpage, and none of them was ever afterward reopened. Each account begins with the entry of the payment of the purchase money of \$400 on May 8, 1902. The accounts with the La Rauts all end on July 31, 1902, with the "charge to stumpage \$500." The account under the name of Ethel La Raut may serve as a sample of all.

518

"Ethel La Raut.

1902.

May 8, J. 108 Check.....	\$400.00
July 31, J. 200 Check.....	100.00
July 31, J. 199 Charge to stumpage for Lots, 9, 10, 15, 16, Sec. 28, T'p 21-2 West.....	\$500.00
	<hr/>
	\$500.00 \$500.00

But the expenses of the entrymen in going to Roseburg lodging there, and returning, the recording fees and the publication notices were not entered in these individual accounts, but were entered

in the books of the company under the heading "Brumbaugh land claims," and were carried into the stumpage account under the item "Cruising." The lands so deeded by the entrymen in 1902 were immediately carried into the general land account of the company. Thereafter the company paid taxes thereon, together with its taxes on other lands, in a sum total. No explanation is made of the fact that the deeds so taken were not recorded. No satisfactory reason is given why the deeds were destroyed. No explanation is given of the fact that for a year and a half after the destruction of the deeds, neither Booth nor the Lumber Company had any conveyance from the La Rauts.

The theory that R. A. Booth advanced the costs and expenses and purchase price for the entries in order to assist his relatives who were in poor circumstances, and that he thereafter advanced money

to them for the same reason and took the deeds as security
 519 illy comports with certain significant facts that appear in the record. One of these is the co-temporaneous payment to

Jordan and the four members of the La Raut family of the identical sum of \$100 each at the time when their deeds were taken. Another is that neither Ethel La Raut nor Lucy La Raut explained why she received the \$100. Lucy testified that she did not need it, or use it, and that when she received it, she loaned it to her father, who paid her interest on it. Another is that not another payment appears by the books of the company to have been made to any of the La Rauts until the time when the company received new deeds from each. When the second deeds were obtained from Ethel and Lucy in 1907, they were each paid \$25.00. When the deeds were obtained from Stephen La Raut and his wife in 1910, they were each paid \$50. None of these payments was charged against the La Rauts personally, nor were the old accounts under their names, which had been balanced and closed, reopened, but these payments were each charged in the stumpage account of the Lumber Company. In short, there is nothing in the books of the company to show that any of the La Rauts owed the Lumber Company or R. A. Booth at any time after their accounts were closed, or that the company paid out any moneys to their account, or that the company held any of the conveyances as security, or that R. A. Booth guaranteed the repayment to the Lumber Company of the moneys which it had so advanced. Another important fact is that at the time when the second deeds were obtained from Stephen La Raut

and his wife, according to the decided weight of the testimony,
 520 money, their claims were each worth at the lowest estimate \$4,000, and probably \$5,000. A most significant fact also is

the change which was made in the answer of the defendants when the Government began to take its testimony before the examiner. The original answer had then been on file three months. The original answer denied "that the entire or any expense attending the making of said entries or purchase, including the payment of said purchase money or the said fees of register or receiver, or all other expenses or disbursements, or any expenses or disbursements were paid or borne by the said defendant corporation." It is not claimed,

nor can it be, that the answer was prepared by counsel or sworn to in ignorance of the facts. The complaint had drawn the attention of the defendants sharply to the charges which were made as to the alleged fraud in acquiring the lands in controversy. The answer was complete in every detail and one of its allegations was that the charges made in the bill had been the subject of investigation by officials of the Interior Department who had fully investigated them for the purpose of ascertaining the truth or falsity of said charges. Another allegation was that the Lumber Company had purchased the lands relying upon the patents and had paid Jordan \$550 and each of the other patentees \$600 therefor. The answer was sworn to by A. C. Dixon, the manager of the Lumber Company. He testified that R. A. Booth had told him the facts in regard to these claims and had informed him that he had caused the company's money to be advanced to pay the expenses and purchase price thereof, and that he had guaranteed the repayment of 521 the money to the company. Dixon testified that he was fully advised of the facts, and that he had stated the facts to the attorneys who prepared the answer. He admitted that the answer was read to him, but he testified that without paying attention to the details, or discussing the various points embodied in it, he had signed it, supposing it was a mere matter of form. But he could not explain why the answer was prepared in the way in which it was, nor was any witness called to explain it.

These facts and circumstances, while perhaps they do not amount to a demonstration of the truth of the allegations of the bill, result in a very decided preponderance of the evidence in favor of that conclusion, and they are sufficient in our judgment to overcome all the presumptions that attend the issuance of the patents, and are sufficient to meet the requirement of the rule that in a suit to set aside a patent, the testimony on which it is done must be clear, unequivocal and convincing, and must be more than a bare preponderance of the evidence, which leaves the issue in doubt. The findings in the court below were made upon evidence which had been taken before an examiner and not in open court, and they are not attended with presumptions in favor of findings which are made upon conflicting testimony where the trial judge has the opportunity to observe the demeanor of the witnesses.

As to the land patented to Jordan, the decree is affirmed. As to the other lands in controversy it is reversed, and the cause remanded with instructions to enter a decree for the United States in accordance with the prayer of the bill.

[Endorsed:] Opinion. Filed Feb. 24, 1913. F. D. Monekton, Clerk.

522 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN LA
Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut,
Defendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and
Appellant,
vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Appeal and Cross-Appeal from the District Court of the United
States for the District of Oregon.

Decree, U. S. Circuit Court of Appeals.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Oregon, and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court as to the land patented to Jordan in this cause be, and hereby is affirmed, and as to other lands in controversy in this cause be, and hereby is reversed, and that this cause be, and hereby is remanded to the said District Court with instructions to enter a decree for the United States in accordance with the prayer of the bill.

[Endorsed:] Decree, U. S. Circuit Court of Appeals. Filed and Entered Feb. 24, 1913. F. D. Monckton, Clerk.

523 United States Circuit Court of Appeals for the Ninth Circuit.
No. 2175.

UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.
BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN LA
Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut,
Defendants and Appellees,
and
BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and
Appellant,
vs.
THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

[*Petition for Appeal to Supreme Court U. S.*]

To the Honorable the Judges of the above entitled Court:

The above named defendants and appellees, Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, and the Booth-Kelly Lumber Company, defendant and appellant, and each of them, conceiving themselves aggrieved by the order and decree entered in the above entitled cause and court, on the 24th day of February, 1913, wherein it was ordered, adjudged and decreed that the decree of the District Court of the United States for the District of Oregon made and entered in said cause on the 9th day of October, 1911, dismissing this suit as to the above named defendants, be reversed, and that said cause be remanded to said District Court with instructions to enter a decree in said cause against said defendants, setting aside, cancelling and annulling the patents issued to said defendants Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, described in the bill of complaint, and affirming that part of said decree
524 of the said District Court setting aside, cancelling and annulling the said patent issued to Edward Jordan, do hereby appeal from said order and decree of the said United States Circuit Court of Appeals for the Ninth Circuit, and the whole thereof, to the Supreme Court of the United States, for the reasons specified in the assignment of errors herein filed, and they pray that this appeal may be allowed and that a transcript of the record papers, exhibits and proceedings upon which said order and decree appealed from was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed)
(Signed)

WOODCOCK & SMITH AND
ALBERT H. TANNER.

Solicitors for Defendants and Appellees, Booth-Kelly Lumber Co., Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, and Booth-Kelly Lumber Co., Defendant and Appellant.

[Endorsed:] Petition for Appeal to Supreme Court U. S. Filed July 14, 1913. F. D. Monckton, Clerk.

525 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

UNITED STATES OF AMERICA, Plaintiff and Appellant,

vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN LA Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and Appellant,

vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Assignment of Errors.

Come now the defendants and appellees above named, and the Booth-Kelly Lumber Company, defendant and appellant, and file herein the following assignment of errors upon which they will rely upon their appeal from the decree made by this Honorable Court on the 24th day of February, 1913, in the above entitled cause.

I.

The Court erred in reversing the decree of the District Court (then Circuit Court) of the United States for the District of Oregon, made and filed in this cause on the 9th day of October, 1911, dismissing the bill of complaint as to the patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, and the lands therein described.

II.

526 The Court erred in not affirming and sustaining the said decree of the District Court (then Circuit Court) of the United States for the District of Oregon, as to the patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, and the lands therein described.

III.

The Court erred in holding and deciding in this cause that the said patents issued to said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut were fraudulent and void.

IV.

The Court erred in not holding and deciding in this cause that said patents issued to Stephen A. La Raut, Alice La Raut, Ethel M.

La Raut and Lucy La Raut were obtained in good faith and without any intention to violate any of the provisions of the Timber and Stone Act.

V.

The Court erred in not holding and deciding in said cause that said Ethel M. La Raut and Lucy La Raut were still the equitable owners of the lands patented to them, and that the deeds made by them to the Booth-Kelly Lumber Company were in fact mortgages to secure the payment of the amounts advanced to them to enable them to enter upon and pay for said land.

VI.

The Court erred in affirming that part of the said decree of the District Court (then Circuit Court) of the United States for the District of Oregon, in this cause, setting aside, cancelling and annulling the patent issued to Edward Jordan.

VII.

The Court erred in not reversing that part of the said decree of the District Court (then Circuit Court) of the United States for the District of Oregon, in this cause, setting aside, cancelling and annulling the patent issued to Edward Jordan.

527

VIII.

The Court erred in not holding and deciding in this cause that the patent issued to Edward Jordan was not fraudulent or void, or obtained in violation of any of the provisions of the Timber and Stone Act.

Wherefore, the said defendants and appellants pray that the said decree of the United States Circuit Court of Appeals for the Ninth Circuit be reversed and the decree of the District Court of the United States for the District of Oregon be affirmed as to the patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, and that as to the patent issued to Edward Jordan the said decrees of the United States Circuit Court of Appeals for the Ninth Circuit, and of the District Court of the United States for the District of Oregon, be reversed.

(Signed)

(Signed)

WOODCOCK & SMITH AND
ALBERT H. TANNER,

*Solicitors for Booth-Kelly Lumber Co., Stephen
A. La Raut, Alice La Raut, Ethel M. La
Raut, and Lucy La Raut, Defendants and
Appellees, and the Booth-Kelly Lumber Co.,
Defendant and Appellant.*

[Endorsed:] Assignment of Errors. Filed July 14, 1913. F.
D. Monckton, Clerk.

528 United States Circuit Court of Appeals for the Ninth Circuit.

At a stated term, to-wit: the October term, A. D. 1912, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourteenth day of July in the year of our Lord one thousand nine hundred and thirteen:

Present:

Honorable William W. Morrow, Circuit Judge.
Honorable William C. Van Fleet, District Judge.

No. 2175.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,
vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation; STEPHEN A. LA RAUT, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and Appellant,

vs.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Order Allowing Appeal to the Supreme Court of the United States and Fixing Amount of Bond on Appeal.

On motion of Mr. Albert H. Tanner, solicitor and of counsel for defendants and appellees, and the Booth-Kelly Lumber Company, defendant and appellant, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered in this cause and Court be, and the same is hereby allowed, and that a certified Transcript of the Record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of \$500.00, the same to act as a supersedeas bond, and also as a bond for costs and damages on the appeal.

529 Know all men by these presents, That we, the Booth-Kelly Lumber Company, a corporation, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, as principals, and L. L. Lewis and A. C. Dixon as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred (\$500.00) Dollars, to be paid to the said United States, its certain attorney, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 21st day of July, 1913.

Whereas, Lately the United — Circuit Court of Appeals for the the Ninth Circuit, in a suit pending in said Court, between the United States of America, as plaintiff and appellant, and the said Booth-Kelly Lumber Company, a corporation, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut as defendants and appellees, and between the Booth-Kelly Lumber Company, a corporation, defend- and appellant, and the United States of America, plaintiff and appellee, a decree was rendered against the said defendants and appellees, and against the said Booth-Kelly Lumber Company, defendant and appellant, reversing the decree of the District Court of the United States for the District of Oregon, entered in said cause on the 9th day of April, 1911, dismissing this suit as to the above named defendants and appellees, and directing that said cause be remanded to the said District Court with instructions to enter a decree in said cause against the said defendants and appellees, setting aside, cancelling and annulling the patents issued to said defendants and appellees Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, and affirming that part of said decree of said District Court setting aside, cancelling and annulling 530 the patent issued to Edward Jordan, and the said defendants and appellees and the said Booth-Kelly Lumber Company defendant and appellant having obtained from said United — Circuit Court of Appeals for the Ninth Circuit an order allowing an appeal from said decree to the said Supreme Court of the United States to reverse the said decree, and a citation directed to the said United States of America citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at the City of Washington, in the District of Columbia, is about to be issued.

Now the condition of the above obligation is such that if the said defendants and appellees, and the said Booth-Kelly Lumber Company, defendant and appellant, shall prosecute their said appeal to effect and pay all damages and costs if they fail to make their plea good, then this obligation to be void; else to remain in full force and virtue.

BOOTH-KELLY LUMBER COMPANY,
By R. S. BOOTH, *Vice-President.*

[Seal of Booth-Kelly Lumber Co.]

BOOTH KELLY LUMBER COMPANY,
By H. A. DUNBAR, *Secretary.*
STEPHEN A. LA RAUT,
ALICE LA RAUT,
ETHEL M. LEWIS,

Formerly Ethel M. La Raut.

LUCY LA RAUT,
By A. H. TANNER, *Their Attorney.*
L. L. LEWIS, *Surety.*
A. C. DIXON, *Surety.*

531 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, L. L. Lewis, and I, A. C. Dixon, being first duly sworn, each for myself depose and say: that I am a resident and freeholder in said District, and that I am worth the sum of One Thousand (\$1,000.00) Dollars, over and above all my just debts and liabilities, and exclusive of property exempt from execution.

L. L. LEWIS.
 A. C. DIXON.

Subscribed and sworn to before me this 21 day of July, 1913.
 [NOTARIAL SEAL.] RICHARD SHORE SMITH,
Notary Public for Oregon.

Form of bond and sufficiency of sureties approved.
 WM. B. GILBERT, *Judge.*

[Endorsed:] No. 2175. United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Booth-Kelly Lumber Co., et al., and Booth Kelly Lumber Co. vs. United States. Bond on Appeal. Filed August 1, 1913. Frank D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

532 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

THE UNITED STATES OF AMERICA, Appellant,
 vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation, et al., Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Cross-Appellant,
 vs.

THE UNITED STATES OF AMERICA, Cross-Appellee.

[*Præcipe for Certified Transcript of Record on Appeal to Supreme Court U. S.*]

To the Clerk of the said court.

SIR: Please issue a certified Transcript of the Record on appeal to the Supreme Court of the United States in the above-entitled cause, consisting of the following:

1. Copy of Printed Transcript of Record on which case was heard in the Circuit Court of Appeals, to which will be added a Copy of the following-entitled papers that were filed, and of the Proceedings that were had in said Circuit Court of Appeals, viz:

2. Stipulation Re Quantities of Timber on Certain Lands, etc., filed Oct. 4, 1912;

3. Order of Submission;
4. Opinion;
5. Decree;
6. Petition for Order allowing Appeal and Fixing Amount of Bond on Appeal to Supreme Court U. S.;
7. Bond on Appeal to Supreme Court U. S.;
8. Assignment of Errors;
9. Præcipe for Certified Transcript of Record on Appeal to Supreme Court U. S.;
10. Certificate of Clerk U. S. C. C. A. to Transcript of Record on Appeal to Supreme Court U. S., and
11. Original Citation on Appeal to Supreme Court U. S. to be annexed to the Transcript.

WOODCOCK & SMITH AND
ALBERT H. TANNER,
Counsel for Booth-Kelly Lumber Co.

533 UNITED STATES OF AMERICA,
District of Oregon:

Due and legal service of the within Præcipe is hereby admitted and accepted at Portland in said district this 29th day of July, 1913.

CLARENCE REAMES,
*U. S. Attorney for Oregon and Attorney for
United States of America.*

[Endorsed:] Præcipe for Certified Transcript of Record on Appeal to Supreme Court U. S. Filed Aug. 1, 1913. Frank D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

534 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2175.

THE UNITED STATES OF AMERICA, Plaintiff and Appellant,

VS.

BOOTH-KELLY LUMBER COMPANY, a Corporation: STEPHEN A. LA Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, Defendants and Appellees,

and

BOOTH-KELLY LUMBER COMPANY, a Corporation, Defendant and Appellant,

VS.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record on Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing five hundred and thirty-three (533) pages, numbered from and

including one (1) to and including five hundred and thirty-three (533), to be a full, true and correct copy of the complete record in the above-entitled cause, prepared pursuant to praecipe therefor filed by counsel for the Booth-Kelly Lumber Company, a Corporation, et al., including all proceedings had therein, and including the Opinion and the Assignment of Errors filed therein, as the same remain on file and appear of record in my office, and that the same, together, constitute the Transcript of Record in said cause on appeal to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this thirteenth day of August, A. D. 1913.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

535 UNITED STATES OF AMERICA, ss:

The President of the United States to the United States of America.
Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal entered in the Clerk's office of the United States Circuit Court of Appeals, for the Ninth Circuit, from the decree of said United States Circuit Court of Appeals for the Ninth Circuit, entered on the 24th day of February, 1913, in which said order allowing appeal the United States is appellant, and the Booth-Kelly Lumber Company, a corporation, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut are appellees, and in which the Booth-Kelly Lumber Company, a corporation, is appellant, and the United States is appellee, to show cause, if any there be, why the decree rendered against the said Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, appellees, and against the said Booth-Kelly Lumber Company, appellant, as in the said order allowing said appeal is mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. William B. Gilbert, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 28th day of July, 1913.

WM. B. GILBERT.

United States Circuit Judge for the Ninth Circuit.

536 UNITED STATES OF AMERICA,
District of Oregon, ss:

Due and legal service of the foregoing citation on appeal is hereby admitted, accepted and acknowledged at Portland, Oregon, this 4th day of August, 1913.

CLARENCE L. REAMES,

*United States Attorney for Oregon, Attorney
for the United States of America.*

[Endorsed:] Docketed. No. 2175. United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Booth-Kelly Lumber Co. et al., and Booth-Kelly Lumber Co. vs. United States. Citation on Appeal. Filed Aug. 6, 1913. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit, by Meredith Sawyer, Deputy Clerk. A. H. Tanner, 314 Spalding Bldg., Portland, Oregon.

Endorsed on cover: File No. 23,850. U. S. Circuit Court Appeals, 9th Circuit. Term No. 258. Booth-Kelly Lumber Company, Stephen A. La Raut et al., appellants, vs. The United States. Filed September 13th, 1913. File No. 23,850.

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In the Supreme Court of the United States

October Term, 1914

BOOTH-KELLY LUMBER COMPANY, STEPHEN
A. LA RAUT, ALICE LA RAUT, ETHEL M.
LA RAUT AND LUCY LA RAUT,
APPELLANTS,
vs.
UNITED STATES.

Brief for Appellants

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE NINTH DISTRICT.

STATEMENT.

This is a suit in equity to set aside five patents
issued by the United States, as follows:

One to Edward Jordan, dated August 3, 1904,
for Lots 7, 8, 9, and 10, of Section 2, Tp. 22 S. of R.
2 West, W. M.

One to Stephen A. La Raut, dated August 3, 1904,

Page Two—

for the N. E. $\frac{1}{4}$ of Section 26, same township and range.

One to Alice La Raut, dated August 3, 1904, for the S. E. $\frac{1}{4}$ of Section 26, Tp. 21 S. of R. 3 W., W. M.

One to Ethel M. La Raut, dated August 3, 1904, for Lots 9, 10, 15, and 16, of Section 28, Tp. 21 S. of R. 3 W., W. M.

One to Lucy La Raut, dated August 3, 1904, for Lots 1, 2, 7, and 8, of Section 28, Tp. 21 S. of R. 2 W., W. M.

Said lands are all situated in a section of the country commonly known as "Brumbaugh Creek," in Lane County, Oregon, and were deeded to the Booth-Kelly Lumber Company.

THE PLEADINGS.

Paragraph I of the bill of complaint sets out that the "Booth-Kelly Company," during all the times mentioned in the bill was and is a corporation, which is admitted by the answer, except it alleges that the true name is the "Booth-Kelly Lumber Company." (Record, 4-11.)

Paragraphs II and III of the bill allege that in February, 1902, the entrymen and entry women filed with the register and receiver of the U. S. Land Office at Roseburg, Oregon, their timber and stone sworn statements, making application to purchase the land, and that in May, 1902, they each made the proof required by law and paid the purchase price of the land, to-wit, \$400, and obtained the final certificates entitling them to patents for the land

purchased, and that on August 3, 1904, patents were issued to the purchasers. (Record, 4-6.)

The answer admits these allegations of the bill to be true. (Record, 11.)

Paragraphs IV and V of the bill allege that the entries were made at the solicitation and by the procurement of the defendant, the Booth-Kelly Lumber Company, acting by and through its officers, agents and hirelings, who fraudulently and corruptly conspired together to procure and hire each of said entrymen for some small sum of money to make the entry and thereupon convey the land to the Booth-Kelly Lumber Company, and that each of said entrymen was in fact procured and hired to make his entry and purchase by some one or more of said conspirators pursuant to said conspiracy, and in making the same said entrymen acted therein not for his own use and benefit, but with the intent and pursuant to an understanding then existing between him and the said person or persons so procuring his entry that the land when so entered and purchased should be conveyed by him to the Booth-Kelly Lumber Company; that the expense of making the entries, including the payment of said purchase money and all other expenses and disbursements, were borne by the Booth-Kelly Lumber Company, and that the affidavits and proofs were false and fraudulent and untrue. (Record, 6-8.)

The answer denies specifically all the allegations of said paragraphs IV and V of the bill, as to said fraud and conspiracy. (Record, 11.)

Page Four—

Paragraph VI alleges that after May 7, 1902, the exact date being unknown to the plaintiff, the said Edward Jordan deeded the land entered by him to the Booth-Kelly Lumber Company; that on May 7, 1907, Stephen A. La Raut and Alice La Raut deeded the land entered by them to the same company; that on September 6, 1907, said Ethel La Raut and Lucy La Raut deeded the land entered by them to the same company, and that the Booth-Kelly Lumber Company by virtue of said deeds and patents now falsely and fraudulently claims to be vested with the full ownership in equity, as well as at law, in and to said lands. (Record, 8-9.)

The answer denies the allegations of paragraph VI except that defendants admit that deeds were made by the entrymen to the Booth-Kelly Lumber Company, and in the original answer it was admitted that it claimed by virtue of said deeds to be the legal and equitable owner of said land, but the answer was amended by stipulation so as to allege and show that the Booth-Kelly Lumber Company is the holder of the legal title to the lands entered by and patented to Ethel La Raut and Lucy La Raut, but denying that it is the equitable owner of said land and alleging affirmatively that said Ethel M. La Raut and Lucy La Raut ever since said patents were issued to them have been and now are the equitable owners of said land, and that the deeds made by them to the Booth-Kelly Lumber Company were intended to be and were in fact mortgages to secure the payment of certain advances made and

to be made to them by said company to enable them to enter and pay for said land and for other purposes, and striking out the plea of bona fide purchase by the defendant, the Booth-Kelly Lumber Company, as to the said lands entered by Ethel M. La Raut and Lucy La Raut. (Record, 18.)

The La Raut patents are based upon a different state of facts than the Jordan patent. The La Raut entries were made with the assistance of Robert A. Booth, the then manager of the company, while the Jordan entry and the entries of H. A. Dunbar, Thomas Roche and D. H. Brumbaugh, not involved in this suit, although in the same group of claims, were made with the assistance of John F. Kelly, the land agent of the company.

THE LA RAUT PATENTS.

The facts as to the La Raut patents are substantially these: Stephen A. La Raut and Alice La Raut, his wife, and Ethel M. La Raut and Lucy La Raut were and are brother-in-law and sisters-in-law to Robert A. Booth, then the general manager of the Booth-Kelly Lumber Company. They were all poor and dependent more or less on Robert, and he assisted them in many ways. Stephen A. La Raut and Ethel M. La Raut were at the time the entries were made in the employ of the company, and Lucy was living at home with her parents. Ethel M. La Raut had asked Robert to assist her in getting a timber claim, and he had promised to do so, when an opportunity arose so that he could. When this

group of entries were about to be made Mr. Booth told Ethel that he could locate her on a claim and would advance her the money to do so, which she could pay back to him when the claim was sold, which was agreed to between them. He also stated to her that the company owned other land adjacent to these lands, and that when the company sold theirs she could include hers in the sale, or if the company logged it off and could use the timber they would pay her the stumpage for the timber. Subsequently the same arrangement was made by Ethel with Mr. Booth for Stephen A. and Alice, his wife, and Lucy. Mr. Booth gave instructions that they should be shown the claims, and instructed H. A. Dunbar, who was then bookkeeper for the company, to furnish them the money and assist them in doing whatever was necessary to comply with the law. In due time they went on the land and subsequently went to Roseburg and made their initial filings, and were furnished the money necessary to pay the fees and charges by Mr. Dunbar, and subsequently they proved up on their claims and were furnished the money by Mr. Dunbar and paid the government price for the land, and final certificates were issued to them. In due course of business the patents were issued. Mr. Booth's instructions to Mr. Dunbar, or at least his intention at the time, was to have the money needed for entering and paying for the land taken from his individual funds and charged to them, but it appears that Mr. Dunbar used the company funds for the purpose and charged same to the

several parties. However, Mr. Booth was to be personally responsible to the company for the money.

After these parties had proved up on their claims they made deeds to Mr. Booth, to be held by him as security for the advances made. These deeds were not recorded, but were held by Mr. Booth until some time in the early part of 1907. At that time Mr. Booth retired as manager of the company and was succeeded by George H. Kelly, and it was arranged at that time to take up the deeds running to Mr. Booth and substitute for them deeds running to the company, which later deeds were duly recorded. Stephen A. La Raut in the spring of 1910 took a notion to go to Canada and went to Mr. Booth about selling his and his wife's claim, who advised him not to sell, but to hold on to their claims and they would be worth a great deal more than they were then. He also informed him that he was no longer manager of the company, but that he would have to go to George H. Kelly, the then manager, if he insisted on selling. He went to George H. Kelly and offered to take \$100, in addition to the advances made by the company, for his and his wife's claims, which offer was accepted and a settlement was made with them by which they were paid an additional hundred dollars for their claims and receipts taken from them. These receipts were exhibited to the government counsel pursuant to his request, and he stated that he did not care for them, and are made a part of the record by stipulation filed in this cause.

Page Eight—

(Record 276-277.) A copy of one of the receipts is as follows:

“Eugene, Ore., Feb. 3d, 1910.

“Received of the Booth-Kelly Lumber Co. fifty dollars in full payment for all balance due me on account of the S. E. $\frac{1}{4}$ Sec. 26, Tp. 21 S. R. 3 W.

(Sgd.) ALICE LA RAUT.”

The other receipt is the same except the description of the land, and signed by Stephen A. La Raut. No settlement has ever been had with Ethel H. La Raut and Lucy La Raut, and they both claim to be the owners of the property, and that the deeds they made to the company are simply mortgages.

THE JORDAN PATENT.

The facts as to the Jordan patent, as claimed by appellant, the Booth-Kelly Lumber Company, are substantially these: Jordan was an employe of the company at its saw mill at Coburg, and had been for many years. He had frequently asked John F. Kelly, land agent of the company, to locate him on a claim. Kelly notified him that he had a claim for him. He went to Eugene and arranged with Kelly to advance the money, and agreed to repay him when he sold the land. He was then shown the land and went to Roseburg and made the initial filing, and subsequently proved up, and a final certificate was issued to him. He was having trouble with his wife, who was about to sue him for divorce, and was anxious to sell his claim, and finally Kelly bought it of him, paying \$100 in addition to the amounts ad-

vanced, and he deeded it to the company. This deed was made after the final certificate was issued, but before patent. Claims were taken by H. A. Dunbar, Thomas Roche and D. H. Brumbaugh, also employes of the company, and the fees and purchase price advanced by the company in the same way, but they were not made parties to this suit, and the patents issued to them have not been attacked in any way by the Government.

DECREES OF LOWER COURTS.

The District Court entered a decree setting aside the Jordan patent and dismissing the bill of complaint as to the La Raut patents (p. 23).

The Government appealed to the Circuit Court of Appeals for the Ninth Circuit, from that part of the decree dismissing the bill as to the La Raut patents, and the Booth-Kelly Lumber Company appealed from that part of the decree setting aside the Jordan patent. (Record, 268-273.)

The Circuit Court of Appeals affirmed that part of the decree of the District Court setting aside the Jordan patent and reversed that part of the said decree dismissing the bill as to the La Raut patents and ordered a decree entered for the United States setting aside all of the patents as prayed for in the bill of complaint. (Record, 285.)

From this decree the Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, have appealed to this court. (Record, 286-293.)

SPECIFICATION OF ERRORS.

I.

The court erred in reversing the decree of the District Court of the United States for the District of Oregon, dismissing the bill of complaint as to the patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Laut and Lucy La Raut.

II.

The court erred in not affirming and sustaining the said decree of the District Court of the United States for the District of Oregon, as to the patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, and the lands therein described.

III.

The court erred in holding and deciding in this cause, that the said patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, were fraudulent and void.

IV.

The court erred in not holding and deciding in this cause, that said patents issued to Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut were obtained in good faith and without any intention to violate any provisions of the Timber and Stone Act.

V.

The court erred in not holding and deciding in said cause that said Ethel M. La Raut and Lucy La

Raut were the equitable owners of the lands patented to them and that the deeds made by them to the Booth-Kelly Lumber Company were, in fact, mortgages to secure the payment of the amount advanced by them to enable them to make entries for and pay for said lands.

VI.

The court erred in affirming that part of the said decree of the District Court of the United States for the District Court of Oregon in this cause, setting aside, cancelling and annulling the patent issued to Edward Jordan.

VII.

The court erred in not reversing that part of the said decree of the District Court of the United States for the District of Oregon in this cause, setting aside, cancelling and annulling the said patent issued to Edward Jordan.

VIII.

The court erred in not holding and deciding in this cause that the patent issued to Edward Jordan was not fraudulent or void or obtained by any violation of the provisions of the Timber and Stone Act.

POINTS AND AUTHORITIES.

There is nothing in the Timber and Stone Act to prevent the entrymen from borrowing the money to pay the expenses of making the entries and to pay the Government price for the land.

U. S. v. Detroit Timber Co., 124 Fed. 393.

Lewis v. Shaw, 70 Fed. 289-294.

Hoover v. Salling, 110 Fed. 43-47.

U. S. v. Richards, 149 Fed. 443.

U. S. v. Barber Lumber Co., 172 Fed. 948-960.

U. S. v. Williamson, 207 U. S. 425.

U. S. v. Biggs, 211 U. S. 507; 32 L. D. 349; 34 L. D. 129.

Larson v. Weisbecker, 1 L. D. 422.

Appeal of Ray, 6 L. D. 340.

Halling v. Eddy, 9 L. D. 337.

Church v. Adams, 37 Ore. 355.

Wilcox v. John, 21 Cal. 267.

Norris v. Heald, 12 Mont. 282.

James v. Tainter, 15 Minn. 512.

Gross v. Hofeman, 91 Minn. 4.

Fuller v. Hunt, 48 Iowa, 163.

It is now settled beyond controversy that upon making his initial filing on a timber claim the entrymen may sell or agree to sell the claim, or borrow money on it, or do as he pleases with it without vio-

lating any of the provisions of the Timber and Stone Act.

U. S. v. Williamson, supra.

U. S. v. Barber Lumber Co., 172 Fed. 948-960.

U. S. v. Kettenbach, 175 Fed. 463-466.

A deed, though absolute in form, if intended as security, is a mortgage, and it may be shown to be such by parol evidence.

Peugh v. Davis, 96 U. S. 332.

Brick v. Brick, 98 U. S. 514.

Cabrera v. Bank, 214 U. S. 224-230.

Russell v. Southard, 12 How. (U. S.) 139.

Hall v. O'Connell, 52 Ore. 164.

Kramer v. Wilson, 49 Ore. 333.

When the Government calls the entryman as a witness on its behalf it is bound by his testimony unless overcome by contravailing evidence.

U. S. v. Barber Lumber Co., 172 Fed. 948-960.

Choctaw, etc., Ry. Co. v. Newton, 140 Fed. 225-250.

U. S. v. Budd, 144 U. S. 154.

As to the character of evidence required by a court of equity to set aside a patent we call attention to the following decisions:

U. S. v. Budd, 144 U. S. 154-162.

Maxwell Land Grant Case, 121 U. S. 325-279.

Colorado Coal Co. v. U. S. 123 U. S. 307, 317.

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U. S. v. Marshall Mining Co., 129 U. S. 579,
589.

U. S. v. Stinson, 197 U. S. 200-204.

U. S. v. Clarke, 200 U. S. 601-608.

The declarations of a person after he has parted with the title to real estate are not admissible against his grantee to defeat or destroy the title.

Dodge v. Freedman's Bank, 93 U. S. 379-383.

Phillips v. Laughlin, 99 Me. 26.

Vrooman v. King, 36 N. Y. 477.

ARGUMENT.

There is nothing in the Timber and Stone Act to prevent one about to enter land under that act from making arrangements to borrow the money to pay the expenses, and to pay for the land and give a mortgage on the land for that purpose, after the entry is made.

In *U. S. v. Detroit Timber Co.*, 124 Fed. 393, the facts as stated in the opinion of the district judge at page 397 were as follows:

"Copeland had at that time talked to some men whom he knew personally and favorably, who had expressed a desire to take up land under that act if they could get the money, and he so advised Martin. Martin then told him that they would loan that class of men the money if they would take up the land. Copeland then inquired what security he would demand, and he said simply their note with eight per cent interest. Copeland then hunted up the men that

he had talked to and others also, and others hunted him up to inquire about the entry of these lands, and he explained to them the law, and told them they could get the money to enter the lands from the Martin-Alexander Lumber Company without security, and that the Martin-Alexander Lumber Company would trust to their honor to pay it. He took them and showed them the lands, made them a probable estimate of the timber in the respective tracts, and told them that the timber on the land at fifty cents a thousand feet (which was the market price at that time) would pay more than the land would cost, and told them they could sell the land or the timber after the patents were issued. All the co-defendants of the Martin-Alexander Lumber Company, nearly all of whom were employees, or had been of the company, entered the land under the conditions just above stated. The money was furnished by the Martin-Alexander Lumber Company. Copeland usually went with the parties to examine the land, accompanied them to the land office and furnished them the money, and they entered the land, made the necessary proofs in conformity with the law, and their expenses to the land office and back were paid by the Martin-Alexander Lumber Company and charged to them upon the books of the company. Either just before the lands were entered and the receipts for the purchase money were obtained, or just afterwards, the money having been furnished to the entrymen by the Martin-Alexander Lumber Company, they would execute their notes to the company for the amount with interest, and in nearly all

instances shortly afterwards they sold the timber standing on the land to the Martin-Alexander Lumber Company by a written contract and the notes were cancelled. By the terms of the contract the Martin-Alexander Lumber Company was to pay fifty cents a thousand stumpage for all the timber cut from the land, and the amount which had been loaned by it to enter the land was treated as purchase money advanced on the timber, and if the value of the timber exceeded the value of the money advanced with interest, the seller was to get the difference."

These facts, with others of a more or less suspicious nature, were held to be insufficient to show that the entries were fraudulent.

The judgment in this case was affirmed in the Circuit Court of Appeals and in the Supreme Court of the United States on the ground that the Detroit Timber Company was a bona fide purchaser, and the question as to whether the entries were fraudulent was not directly passed upon by these courts, while the district judge dismissed the bill on the ground that the entries were not fraudulent.

We cite the case here to show that the fact that the Booth-Kelly Lumber Company advanced the money to pay the expenses of the entries and to pay for the land did not render the entries illegal or fraudulent.

In *Lewis v. Shaw*, 70 Fed. 289-294, where a similar question arose, it was disposed of by Judge Hanford as follows:

"It is claimed that Miller did not purchase the land in good faith for his own use, but acted merely as the instrument of Ryan, and that it was agreed between them that the title which Miller should acquire should inure to the benefit of Ryan. It was on this ground that the Secretary of the Interior cancelled the entry. The facts relied upon to sustain the Secretary's conclusion are that Miller was an employee of Ryan and obtained his first information with reference to the land from Ryan; that before deciding to enter it as timber land he consulted with Ryan and obtained from him a promise to advance the amount of money necessary to make the entry, and that Ryan agreed to take as security for the amount of the purchase price which he should advance a conveyance of a one-half interest in the land; that Ryan did advance the money to Miller at the time his final proof was made; that a few days afterwards Miller executed a contract to convey a one-half interest in the land as security for the money advanced and an additional sum which Miller owed on account of other dealings, in all amounting to \$475. Ryan then commenced cutting timber on the land and actually removed most of the merchantable timber, and he subsequently purchased Miller's remaining one-half interest for the price of \$1,000.

* * * * *

"The facts are not necessarily inconsistent with an honest entry by Miller, and certainly not sufficient to compel an inference of fraud sufficiently strong to overcome the only positive testimony bearing upon this vital point. To justify

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a forfeiture, proof of the facts constituting fraud or perjury must be clear and convincing. Mere inferences are not sufficient."

In *Hoover v. Salling*, 110 Fed. 43, 47, the Court of Appeals for the Seventh Circuit held that a married woman making an entry of a timber claim might borrow the money from her husband with which to pay for the land, and held that a ruling of the Interior Department to the contrary was erroneous.

In *United States v. Richards*, 149 Fed. 443, which was a criminal prosecution for a conspiracy to defraud the Government out of certain of its lands, the court, Munger, judge, gave the jury the following instruction (page 456) :

"The jury is instructed that the defendants, or any of them, had a perfect right to advance money to entrymen to pay filing fees, and to agree that in the event the entryman desired to sell after he had proved up and the defendant then desired to buy, such advances should be credited on the sale, or if no such arrangement was thereafter made the money would be refunded, and that such an agreement would not, in and by itself, be a violation of any law of the United States. But such fact may be considered in connection with the other evidence in determining the existence of the alleged conspiracy or corrupt agreement."

In the case of the *United States v. Barber Lumber Company*, 172 Fed. 948-960, the court says, after quoting from the Budd case:

"Indeed, under later decisions an applicant for the purchase of timber lands has a right

after he has made his initial application, and before final proof, to contract to sell the title thereafter to be acquired, and the intending purchaser may lawfully advance to him the money with which to make final proof in order that he may comply with his contract,"

citing *U. S. v. Williamson*, 207 U. S. 425; *U. S. v. Biggs*, 211 U. S. 507.

The Secretary of the Interior has several times held that such fact would not render the entries fraudulent or affect their validity.

32 L. D. 349.

34 L. D. 129.

The pre-emption law contained a clause identical with the one in the Timber and Stone Act. It required the pre-emptor to make oath "that he has not settled upon and improved such land to sell the same on speculation, but in good faith, to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself." (Revised Statutes, Sec. 2262.) While it was at one time held by the Interior Department that this statute prohibited the making of a mortgage on the land to obtain money to pay for it, the later decisions are the other way.

In *Larson v. Weisbecker*, 1 L. D. 409, it was said by Secretary Teller:

"I am aware that the former rulings of your office and of this department, following the precedent of an early decision, have held that an outstanding mortgage given by a pre-emptor upon the lands embraced in his filing defeats his right of entry upon the ground that such mortgage is a contract or agreement by which the title to the lands might inure to some other person than himself. A careful consideration of this section leads me to a different conclusion and to the opinion that, unless it shall appear under the rules of law applicable to the construction of contracts or otherwise that the title shall inure to another person, it does not debar the right of entry; and that the mere possibility that the title may so result as in the case of an ordinary mortgage is not sufficient to forfeit the claim. * * * The statute under consideration requires from a pre-emptor, in my opinion, in order to the defeat of his right of entry, a contract by force of which title to the land must vest in some other person than himself; and it must appear that such was his intention at the time of making it. If, on the contrary, the mortgage was a mere security for money loaned, and the contract does not necessarily divert the title from him, it was not a contract or agreement within the meaning of Section 2262."

This decision was rendered April 24, 1882, and was followed October 11, 1887, *Appeal of Ray*, 6 L. D. 340, where it is said "there is no law or ruling of this department now in force that prohibits a pre-emptor, who has complied with the requirements of the pre-emption law in good faith, from mortgag-

ing his claim to procure money to prove up and pay for the land."

To the same effect is *Haling v. Eddy*, 9 L. D. 337, decided September 7, 1889.

This ruling has never been departed from by the Interior Department.

Many of the state courts have held the same way on the subject, as a reference to the cases cited in this brief will show.

It is therefore perfectly clear that a person about to enter a timber claim may arrange with a third person to advance him the money with which to pay the expenses and to pay for the land, and after filing upon the land give a mortgage to secure the payment of such advances without violating any of the provisions of the Timber and Stone Act.

Hence the fact that the Booth-Kelly Lumber Company advanced to the entrymen and entry women money with which to take and pay for the land, and after the entries were made took mortgages to secure the payments so made, is not sufficient to justify the setting aside of the patents if the entries were otherwise made in good faith.

Before entering upon a discussion of the evidence as to the bona fides of the entries we call the attention of the court to the character of proof required to justify the court in setting aside a patent. The Supreme Court of the United States has many times announced the rule on this subject, and it is no longer a matter of controversy, but we call attention to it here because we are firmly convinced that the

Government failed to make out a case as to any of the patents, by the clear preponderance of the evidence required, by these decisions.

In the Maxwell Land Grant case, 121 U. S. 325-381, the court said:

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contract of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments demand that the effort to set them aside, to annul them or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the

officers of the Government and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attach them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction shall make such an attempt successful."

In *Colorado Coal Co. v. United States*, 123 U. S. 307, after quoting from the *Maxwell Land Grant* case, the court says, at page 317:

"It thus appears that the title of the defendants rests upon the strongest presumptions of fact which, although they may be rebutted, nevertheless can be overthrown only by full proofs to the contrary, clear, convincing and unambiguous. The burden of producing these proofs and establishing the conclusion to which they are directed rests upon the Government."

In *United States v. Marshal Silver Mining Company*, 129 U. S. 579-589, the court, after reaffirming the earlier cases on the subject, says:

"The dignity and character of a patent from the United States is such that the holder of it cannot be called upon to prove that everything has been done that is usual in the proceedings had in the Land Department before its issue, nor can he be called upon to explain every irregularity or even impropriety in the process by which the patent is procured."

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In *United States v. Stimson*, 197 U. S. 200-205, which was a suit to set aside a patent on the ground of fraud in procuring it, the court says, at page 205:

“It should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful.”

In *United States v. Budd*, 144 U. S. 154-162, where a case similar to the one at bar was under consideration, the court says, at page 162:

“This case is even stronger in its aspects than some that have been before us, for if the particular wrong charged upon the defendants be established the money paid is, by the second section of the act, forfeited, and there is not even the possibility suggested in the case of *United States v. Trinidad Coal Co.*, 137 U. S. 160, of an equitable claim upon the Government for its subsequent repayment. The hardship of such a result, so different from that which is always enforced in suits between individuals, makes it imperative that no decree should pass against the defendants unless the wrong be clearly and fully established.”

And in *U. S. v. Williamson*, 207 U. S. 425-460, it was definitely settled that an entry under the Timber and Stone Act was not vitiated or forfeited unless it be shown that the agreement that the title should inure to the benefit of some other person was made before the making of the initial or declaratory application to purchase.

THE JORDAN PATENT.

We will now ask the attention of the court to the evidence relating to the Edward Jordan patent with a view of determining whether the Government has made out its case with that degree of certainty required in this class of cases, as shown by the foregoing decisions of the Supreme Court of the United States.

The figures in parentheses refer to the pages of the printed record.

LAND OFFICE RECORDS.

The Government introduced in evidence the Land Office records, being the original declaratory statement, final proof, notices, etc., as to the claim of Edward Jordan (pp. 24-34).

We find from an examination of this record that Jordan in his declaratory statement made oath, among other things, as follows:

"That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except myself, and that my postoffice address is Coburg, Ore." (P. 27.)

In proving up on his claim, after notice, he made the same statements under oath, and in answer to

questions propounded to him by the Register of the Land Office, on the 7th day of May, 1902. (P. 33.)

JORDAN'S EVIDENCE IN THIS CASE.

On December 20, 1910, more than eight years after his entry, he was called as a witness in this case and testified to facts which, if true, show that he deliberately perjured himself in his declaratory statement, and in his final proof (pp. 135-136), or in his testimony given in this case. We claim he told the truth in his declaratory statement, and in his final proof, and that his effort at this late day to destroy the title which he acquired from the Government and sold to the Booth-Kelly Lumber Company, is due to a pique on his part because he did not receive as much for his claim as Dunbar and Roche did for theirs (pp. 187-207). He forgets that Dunbar and Roche held on to their claims until a more propitious time to sell, while he insisted on selling at once on account of expected litigation with his wife, who was about to sue him for divorce (pp. 217-218). Dunbar and Roche sold to the company in November, 1904 (pp. 187-207), while Jordan's claim was deeded to the company in July, 1902 (p. 130).

There was a decided advance in the value of lands in that vicinity in 1904, as the testimony shows.

We contend that Jordan's testimony is unreliable not only because of his admission that he deliberately perjured himself before the officials of the local Land Office in his declaratory statement, and in his final proof, but because his testimony given in

this case is on its face uncertain, improbable and contradictory. This will be shown by a careful analysis of his testimony, which we now propose to make.

He says in his direct examination that Kelly called him up by telephone and asked him if he wanted to take up a timber claim *for him* (p. 135). On cross-examination he says Kelly asked him if he wanted to take a timber claim (p. 143). He says Kelly told him he would give him \$100 for taking up the claim (p. 136) when he went to Eugene and that the conversation took place in Kelly's office (p. 149), but on cross-examination, when he is called upon to detail all the conversation between them at that time he says nothing about the \$100 being mentioned (p. 143), and said he did not remember all the conversation (p. 143). He swears positively that the land was paid for by a check on the Eugene Loan and Savings Bank (pp. 144-145), and says he knew the difference between a check and a draft. Yet the statement of J. H. Booth, receiver of the Land Office, introduced by the Government, shows that it was a draft and not a check (p. 78). He says he saw Kelly the next day when he came back from filing on the land, but did not talk to him (p. 146). In the next breath he says he did not remember whether he talked to him or not the next day; thinks not (p. 146). Then when asked if he did not see him and tell him he had been up and filed on the claim, he says, "Certainly" (p. 146). After saying in one breath that he might have seen Kelly the next day and talked

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with him, he swears he did not say that (p. 146). Although he has been a timber man and engaged in the lumber business, he pretends that he did not know such an arrangement as he testifies to was illegal (p. 150).

After giving page after page of contradictory and inconsistent answers in his testimony, he was asked if Kelly said anything to him about agreeing or making any contract with him to sell the land before he filed on his claim, and he made the following answers:

“A. He called me up and wanted me to take up a claim.

Q. That was all there was to it?

A. There was lots more, but I do not remember what; it was a good many years ago” (p. 151).

He admits in another place that his memory is bad as to the time and dates (p. 143).

It does not appear when Jordan turned patriot and disclosed this transaction as he now claims it to the Government agents. It does appear from his own evidence that he had not done so up to 1905, for when T. B. Newhausen, a special agent of the Government, and then actively engaged in land fraud investigations in Oregon, interviewed him at Clatskanie, and requested him for information about his claim, he refused to talk (p. 141). He was in Portland when the federal grand jury was in session in 1905 investigating land frauds, but he made no disclosures to that body or to any of its officers or

agents of the crooked piece of business he had been engaged in as he now claims on behalf of the Booth-Kelly Lumber Company (p. 141).

He was asked on cross-examination if when he was interviewed by T. B. Newhausen at Clatskanie he did not tell him that whatever arrangement he had with Kelly about selling him the claim, was made after he had filed on the land, and made answers as follows:

“A. That I do not remember.

Q. Are you sure about that?

A. It is a long time ago, and a fellow forgets those things, you know” (p. 141).

He knew that Newhausen might be called to impeach him as to such statement, and so he says he did not remember.

Indeed, there is only one fact he seems to have thoroughly in mind, and that is that the arrangement with Kelly about paying the \$100 was made before he filed on his claim. He seems to have been made to understand that that much he must be certain of in order to defeat the patent. As to all else there is uncertainty, obscurity and memory fails him.

Besides the inherent weakness of Jordan's testimony, he is flatly contradicted and impeached by Thomas Roche. Jordan testified that he mentioned to Roche on their way to Roseburg that they were throwing their rights away, but that they might as well get the hundred dollars as lose it entirely, and that Mr. Roche nodded his head to what he said

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(pp. 137-138). Mr. Roche says no such conversation ever occurred (p. 207), and he further says there was no understanding or talk among them that they were to get \$100 out of it, or anything of the kind (p. 207).

Jordan is flatly contradicted by John F. Kelly, with whom it is conceded the arrangement about taking the claim was made. Kelly says that Jordan had spoken to him a number of times about locating him on a timber claim, and that he told him about the tract on "Brumbaugh Creek" (p. 215). That the arrangement with Jordan about buying his claim was made when he gave him the final receipt (pp. 216-217), and that prior to that time he had not made any arrangement with him to buy the claim or that he would take the claim for him or the Booth-Kelly Lumber Company (p. 217), and that he explained to him that they could not make any such agreement (p. 217). That the agreement was that they would advance him the money to pay for the land and his expenses, and that he would repay it when he sold his claim (p. 217). Kelly also testified that Jordan was anxious to sell his claim because his wife was about to sue him for a divorce (pp. 217-218), which is not disputed by Jordan. Kelly also testified that he loaned Jordan \$50, after the deed was made, but which he had repudiated and refused to repay (pp. 226-227). Jordan finally admits that he had for some time wanted to get hold of a timber claim if he could (p. 145), which being the case it is quite natural that he should have asked

Kelly, the land agent of the company, to locate him on a claim, as Mr. Kelly testified he did (p. 215).

The Government's case, as to the Jordan patent, rests upon the testimony of Jordan, the patentee, and the question is presented to this court whether it will accept the testimony of such a witness as Jordan has shown himself to be, stultified and impeached as he is in every way it is possible to impeach a witness, or whether it will accept the testimony of John F. Kelly as to the transaction.

Mr. Kelly is a man of high standing in the community where he resides, and while he has, as land agent of the Booth-Kelly Lumber Company, bought thousands of acres of timber land for it, he has never been accused of land frauds or of any connection with land frauds. At the time Mr. Kelly testified in the case he could not have been prosecuted criminally, if he had violated the law, because the statute of limitations had run against it, and it furthermore appears that at that time he had ceased to be a stockholder in the Booth-Kelly Lumber Company or to have any financial interest whatever in it (pp. 214-215). Consequently there was no motive or reason why he should not have told the truth as to the transaction with Jordan, and we believe he did tell the truth about it, and that nothing was said to Jordan about buying his claim, or anything of the kind until after he had filed on the land and paid for it and had gotten the final receipt.

Mr. Kelly is a business man, and has been engaged in the timber business for many years, and

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says in his testimony that he knew it was against the law to have Jordan take a claim for him or to make any agreement with him to buy it (p. 217), and that he so explained the matter to Jordan and refused to deal with him at all until he had gotten the final receipt (p. 217), and Jordan practically admits as much (pp. 144-147). He also says he does not remember the conversation that took place between him and Kelly at the time he gave him the final receipt (p. 147).

We quote from his testimony on this point as follows (p. 147) :

“Q. You came back, where did you see Mr. Kelly at that time?

A. I think I seen him there in his office.

Q. In Eugene?

A. Yes, sir.

Q. You say you gave him the receipt?

A. Yes, sir.

Q. What conversation occurred at that time between you?

A. I do not remember.

Q. Was anything said about the hundred dollars at that time?

A. No, I think not.

Q. Was anything said at that time about a deed to the company for the land?

A. No, not that I remember of.

Q. Now, up to that time, there had been nothing said in any conversation about your deeding the land to the company, had there?

A. When I went up there and paid for the land, and got that receipt, he said that was all he cared for, that little receipt.

Q. Up to that time there had been nothing said about your deeding the land to the Booth-Kelly Lumber Company?

A. I think not.

Q. At the time you gave him that receipt was there anything said about the hundred dollars?

A. No, sir, not that I remember of.

Q. What conversation did you have with him at that time?

A. About the hundred dollars?

Q. No, any conversation relating to the matter; what was the conversation at the time you gave him that final receipt?

A. I do not remember what the conversation was.

Q. You did have some talk with him?

A. Yes, sir.

Q. But you do not remember what it was?

A. No, sir."

The learned trial judge in an opinion filed in this case uses this language:

"It may be, and I think it is quite probable, that there was no agreement in express terms between Jordan and Kelly that the land should be entered for the defendant, but the entire circumstances, together with Jordan's testimony, leave it practically unquestioned that whether such an agreement was made or not Jordan understood that the land was not to be taken for himself, but for the defendant, and that such was the understanding of Kelly" (p. 22).

The decisions of the courts interpreting the Timber and Stone Act are somewhat indefinite as to

what kind of an understanding or "agreement" is within the statute, but the consensus of opinion seems to be that there must be a meeting of the minds of the parties expressed in some tangible form, that the title when secured shall inure to the benefit of some other person than the entryman.

In *United States v. Richards*, 149 Fed. 443 at 450, which was a criminal prosecution for violating a similar provision of the homestead law, Munger, judge, instructed the jury as follows:

"The statute, in forbidding the applicant to make directly or indirectly any agreement or contract in any way or manner with any person by which the title he may acquire from the Government shall inure in whole or in part to the benefit of any person except himself, means by the word 'agreement' that there must be a meeting of minds expressed in some tangible way, and must be an intent in some way to be binding upon the parties. One party may have intended to sell, the other party may have intended to buy, yet this would not be sufficient unless the intention of each was in some way communicated from one to the other, and was understood and agreed to by both.

"An agreement, as the word 'agreement' is used, need not be in writing. It need not be of sufficient form or of the nature to be enforced in court. It is enough if it is proven beyond a reasonable doubt that in some way the minds of the applicant and some other person have met definitely and understandingly—that there is a mutual consent that, when the applicant may acquire title to the land from the United States,

it shall inure to the benefit of such other person for a consideration; that is, that in truth and in fact the applicant is ready to acquire the land for the use and benefit of another. And any words and acts manifesting this mutual consent of the minds of the parties are sufficient to constitute a contract or agreement."

Conceding the law to be as there stated, and it is certainly stated as strongly in favor of the Government, as the statute will warrant, and there was no violation of the act, because Kelly testified positively that he made no agreement with Jordan as to taking the land for himself or the company prior to the time he brought him the final receipt (p. 216), and consequently the minds of the parties never met or agreed prior to that time. Even if Jordan's intention was at and before he filed upon the land to take it for the benefit of the company, there would be no agreement to that effect unless Kelly at that time also so intended and understood it. Where a man testifies positively that he did not make such an agreement because he knew it would be a violation of the law to do so, it should require something more than suspicious circumstances to justify any court in finding that he did intend to violate the law. Kelly may have supposed that the company would get the land eventually, but that would not be a violation of the statute. He abstained from making any agreement for its purchase before the final receipt was issued because he did not want or intend to violate the law or lay himself liable to prosecution criminally, and

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yet the court below says in effect that it will imply such an agreement and the consequent violation of the law, notwithstanding his positive denial that he ever made such agreement.

In the case of *United States v. Budd*, 144 U. S. 154, at page 163, the court says:

“No man is presumed to do wrong or to violate the law, and every man is presumed to know the law. And in this respect the case does not rest on presumptions, for the testimony shows that Montgomery knew the statutory limitations concerning the acquisition of such lands, and the penalties attached to any previous arrangement with the patentee for their purchase.”

In view of this presumption of innocence, where is the preponderance of evidence as to when the agreement was made? Is it with Kelly that the agreement was made after Jordan brought him the final receipt, and therefore an innocent and lawful agreement, or is it with Jordan, contradicted and impeached as he is, who claims it was made before he filed on the claim, and therefore unlawful and criminal?

THE LA RAUT PATENTS.

The La Raut patents, although a part of the same group of claims as the Jordan claim, rest upon a somewhat different state of facts. There are four of the La Raut patents, and as the evidence is practically the same as to all of them, we will consider them together.

LAND OFFICE RECORDS.

The Government, as a part of its case in chief, introduced the Land Office records as to each of the claims, being the declaratory statements, notices, final proof and final receipts.

These records show that each of the entrymen and entry women made oath in their declaratory or initial affidavits and in their final proofs, "that they did not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any persons except myself" (pp. 35-75).

STIPULATIONS AS TO PAYMENTS FOR LAND.

It was stipulated that the money for the payment of the purchase price to the Government for the land involved in the entries in controversy, including Land Office fees, of Stephen La Raut, Mistress Alice La Raut, Ethel La Raut, Lucy La Raut and Edward Jordan, together with the publication fees and the expenses of the entrymen in taking up the land and going to and from the Land Office, were furnished by the Booth-Kelly Lumber Company, subject to the right of said defendants to show the circumstances and agreement under which said sums of money were paid (p. 78), and in that connection the letter of J. H.

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Booth to A. C. Woodcock was introduced, showing how the amounts were paid at the Land Office, and the amounts of such payments (p. 78).

C. J. Howard, page 76:

Government then called C. J. Howard, who testified to being the proprietor of the newspaper "Bohemian Nugget," and that the notices of final proof in these cases were published in his paper, and that he did not recall who paid his charges, and that his books did not show and that the notices were in the usual form of such notices (pp. 75-77).

George W. Riggs, page 77:

Government then called George W. Riggs, who testified that he was working for the Booth-Kelly Lumber Company in 1901 and 1902, and assisted Mr. Brumbaugh in cruising timber land in township 21 south of range 2 and 3 west, and that he knew nothing about the entry of the lands in question (pp. 76-77).

D. H. Brumbaugh, page 79:

Government then called D. H. Brumbaugh, who testified that he was a rancher and was a cruiser for the Booth-Kelly Lumber Company for ten years or twelve years, since about 1900, and that he was working for the company in 1902; that he had cruised in townships 21, 22, 23 west, and that he showed the claims in question to the entrymen and entry women two or three months, or such a matter, after it was cruised; that the entrymen and entry women brought the numbers of the land to him and he showed them

the claims, and that John Kelly paid him for his services (pp. 79-82).

Mrs. M. S. Applestone, page 82:

Government then called Mrs. M. S. Applestone, who testified that she lives in Lewiston, Idaho, and that Alice La Raut is her mother, and Stephen La Raut is her stepfather; that she lived in Portland in 1902, and was visiting her mother at Saginaw in the spring of 1902, and that her mother told her she had taken a timber claim for Robert Booth, and that she was to be paid \$100 for her claim, and that she was paid \$100 therefor (pp. 83-84).

She further testified that she saw the forms for making final proof, showing the questions and answers, and that her mother told her Robert Booth had sent them to her (pp. 84-85).

This is denied by Robert A. Booth (p. 171).

She says she does not know whether Booth's promise to pay her mother \$100 was before or after she had filed on the land (pp. 86-87).

She says on cross-examination that she does not remember whether the conversations were before they filed on the land or before they proved up on the claims (p. 86).

Says the conversations were with her mother (p. 88).

Says they got an additional payment of \$100 about the time they went to Canada (p. 89).

Says her mother did not tell her that Robert Booth ever talked to her personally about the matter (p. 90).

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Says she does not remember who she first told about these conversations, nor about when it was, nor who it was she told about them (p. 90). She says the matter was not kept from her—was not considered a secret (p. 90).

Her testimony throughout shows that she is uncertain as to when the conversation with her mother occurred. Her uncertainty as to other things suggests that she might be mistaken as to the terms of the conversation. We shall have something more to say about her testimony later on in this brief.

Lucy La Raut, page 93:

Government then called Lucy La Raut, one of the entry women, whose testimony is clearly and distinctly against the Government on every proposition.

Ethel M. Lewis, page 108:

Government then called Ethel Lewis, formerly Ethel La Raut, one of the entry women, whose testimony is also clearly against the Government.

Both Ethel M. Lewis and Lucy La Raut testify that they took the claims in good faith for their own benefit, and that there was no agreement to sell it to the Booth-Kelly Lumber Company, and that they still own the claims and that the deeds they made were intended as security for the advances made to them to enable them to take and pay for the claims (pp. 99-102, 119-123).

George W. Riddle, page 128:

The testimony of George W. Riddle, Receiver of the Länd Office, was introduced for the purpose of

identifying the records offered as evidence (pp. 129-130).

Fred C. Rabb, page 127 :

The testimony of Fred C. Rabb was for the purpose of showing that no contest or controversy had arisen in reference to the claims in dispute (p. 127).

Louis Sharp, page 129 :

The testimony of Louis Sharp was for the purpose of showing that no investigation had been made by the Government in reference to the claims (pp. 129-130).

On page 134 is a stipulation that the patents were delivered to F. E. Ally and that he delivered the same to John F. Kelly.

Edward Jordan, page 135 :

Government then called Edward Jordan, upon whose testimony we have already commented.

D. H. Brumbaugh, page 152 :

Government then called D. H. Brumbaugh, who testified that John Kelly asked him to take up a timber claim, and that he told him he would do so; that he told him to pick out a good one on Brumbaugh Creek; that he would furnish the money, pay his expenses and give him \$100 (pp. 152-153); that about two years after he proved up he deeded the claim to the Booth-Kelly Lumber Company (p. 153). On cross-examination he says that he could not remember whether the conversation he had with Kelly about taking a claim was at Cottage Grove or Eugene (p. 155).

The following question and answer are significant:

“Q. Was that all that was said at that time about it? If you didn’t want to take a timber claim?

A. Yes.” (P. 280).

He says he was paid the \$100 at the time he signed the deed, or about that time (p. 157). Finally he says he sold the land to the company for \$520, being \$420 paid for the land and Land Office fees, and the \$100 paid him at the time the deed was made (pp. 157-158). Says there was nothing said in the conversation with Kelly about deeding the land to the company before he filed on the claim (p. 158).

Mr. Kelly testifies positively that no such conversation occurred (pp. 218-219). Mr. Kelly details a conversation he had with Brumbaugh about what he told the authorities who were investigating the land frauds in Oregon, and he said that he told them that he had made no arrangement whatever to dispose of his claim until after he had proven up on it (p. 229), and this is not denied by Brumbaugh. We tried to get hold of the affidavit Brumbaugh made at the time of the land fraud investigations, but were unable to do so (p. 157).

In regard to this affidavit and its contents, Brumbaugh testified as follows:

“Q. You remember making an affidavit here before Haney or Burns, or whoever it was?

A. Yes, sir.

Q. Did not you swear in that affidavit that the arrangement you had about this land and

selling it was made after you filed on the claim?

Counsel for the Government objects to the question unless the affidavit is shown the witness.

Question withdrawn.

Q. Do you not remember anything about what was in the affidavit?

A. That affidavit calls for timber regarding Jones and Cook, most of it.

Q. Was not it in relation to this claim?

A. Something was asked, I do not know exactly what is was now. I do not know just exactly how it was.

Q. Who did you furnish that affidavit to?

A. I do not know who called on me for it.

Q. When did you make the affidavit?

A. I do not know that.

Q. Was it during the time of the land fraud investigation here?

A. Well, it was some time during that time, yes.

Q. Did they have you down here before the grand jury?

A. Yes, sir.

Q. Did you testify about this matter before the grand jury?

A. No, sir.

Q. You do not know whom you did furnish the affidavit to?

A. I do not recollect.

Q. Did you state anything in your affidavit about your claim, which you have now testified to?

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A. There was something mentioned in it, but I do not know just what it was now.

Q. Did not you state in that affidavit, that you had made no agreement to sell the land to Kelly, or to the Booth-Kelly Lumber Company, before you filed on the claim?

A. I do not know whether I did nor not, because I do not recollect anything about what I put in it.

Counsel for defendants here state that they desire to notify counsel for the Government to produce that affidavit.

Mr. McCourt: We will produce it if we can get it, but we never have seen it" (pp. 156-157).

It was not produced.

It will thus be seen that he testified to having made an affidavit, but that he does not remember what was in it.

DEFENDANT'S CASE.

The defendant, Booth-Kelly Lumber Company, laid its books before special agents of the Government before this suit was brought, and also since that time, and has disclosed all the facts in connection with those claims. It has kept nothing back, nor has it sought to evade the production of any paper, document or book the Government wanted.

R. A. Booth, pages 165-185:

The testimony of R. A. Booth is full and clear as to the transaction with the La Rauts. It shows clearly and distinctly that there was no agreement with any of them that he or the company was to have

their claims, but that he was doing what he did for them to assist them and for their own benefit. He testifies that he advised Stephen La Raut not to sell their claims, but to hold on to them, and if they had done so they might have gotten a great deal more out of them (p. 319), and he explains the manner in which the settlement was made with Stephen A. La Raut and his wife (pp. 175-176).

H. A. Dunbar, page 185:

H. A. Dunbar, who took up a claim at the same time as the others and in the same manner, was not called by the Government, but the defendants called him and he testified that he took his claim in good faith, and for his own benefit, and that there was no agreement to sell it to the company (p. 186), and that he sold his claim to the company in November, 1904, for \$1,300 (p. 187). He also explains the entries in the books as to these claims (p. 188). He also says that Mr. Booth told him he, Booth, was to be responsible for the claims (p. 188), and that he assisted the La Rauts in filing on their claims and in proving up on them, at the request of Mr. Booth (p. 187).

Thomas Roche, page 205:

Thomas Roche took a claim at the same time as the others, and in the same manner, was not called by the Government, but the defendants called him and he testified that he took his claim in good faith and for his own benefit and that there was no agreement to sell it to the company (pp. 205-206), and that

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he sold his claim to the company in November, 1904, for \$1,300 (p. 207).

Geo. H. Kelly, page 231:

Geo. H. Kelly, who succeeded R. A. Booth as manager of the company, fully corroborates Mr. Booth as to the understanding as to the La Raut claims, and also as to the settlement with Stephen A. La Raut and wife (pp. 231-233).

A. C. Dixon, page 237:

A. C. Dixon, who succeeded George H. Kelly as manager of the company, fully corroborates Mr. Kelly and Mr. Booth as to the understanding about the La Raut claims and about the settlement with Stephen A. La Raut and his wife (pp. 238-239). He is the present manager of the company, and says that Ethel M. Lewis and Lucy La Raut still own their claims (p. 239).

GOVERNMENT'S REBUTTAL.

The Government called in rebuttal George Sorenson, T. B. Newhausen, M. A. Martin and C. B. Mead, who gave their opinions as to the value of the timber in the Brumbaugh region, and as we view it it is of no particular value, so far as determining the bonafides of these patents is concerned.

We have thus gone briefly over the evidence relied upon by the Government to justify the setting aside of the La Raut patents.

OPINION OF JUDGE BEAN AS TO LA RAUT CLAIMS.

We call the attention of the court to the comments of Judge Robert S. Bean, before whom the case was tried, upon this evidence (pp. 20-22).

He says, among other things (p. 21) :

“Now, so far as the four La Raut claims are concerned, there is no direct testimony to support the averments of the bill. Indeed, it is all to the contrary, and to the effect that the entries were made for the exclusive use and benefit of the entrymen, and that there was no agreement, express or implied, that the land should be conveyed to the defendant company or that the entrymen made the entries in reality for said company or any other person.”

We believe this court, when it has read the testimony, will reach the same conclusion.

IS THE EVIDENCE AS TO THE JORDAN PATENT ADMISSIBLE AGAINST THE LA RAUT PATENT?

It is argued that if the Jordan claim is fraudulent, or, in other words, if the court shall believe the testimony of Jordan as to his claim, that then the court must find the La Raut claims fraudulent also, because taken at the same time and in practically the same way; and that the evidence as to the Jordan claim is admissible against the La Raut claims.

There were also included in this group of claims entries made by D. H. Brumbaugh, H. A. Dunbar and Thomas Roche, made at the same time and under

the same terms, and patents were issued to them at the same time they were issued to Jordan and the La Rauts. These three claims, the Dunbar, Brumbaugh and Roche claims, were not included in this suit and no attempt has been made by the Government to set aside the patents issued to them. It seems a reasonable inference from the failure of the Government to include these patents in this suit that these claims were bona fide claims, or at least that there was not sufficient evidence to justify the Government in attacking the patents.

It is quite as fair an argument that because these three patents were obtained in good faith that the others were also obtained in good faith, as it is to assume that if the Jordan patent was fraudulently obtained the others were also fraudulent.

The comments of this court, as to a similar contention in *United States v. Budd*, 144 U. S. 154 at 164, are strongly in point. The court says:

“The Government relies also on the testimony of Edward J. Searls that Montgomery promised to give him \$125, and all costs and expenses, if he would enter a tract of timber land and convey it to him, and that thereafter Montgomery advanced the money for the payment to the Government, and subsequently, on receipt of a deed, paid him the \$125. If it be conceded that this testimony as to another transaction be competent in this case, and there be put upon the testimony the worst possible construction against Montgomery to the effect that he made a distinct and positive agreement with Searls

for the purchase of a tract which the latter was to enter and obtain from the Government, and so a transaction within the exact denunciation of the statute, still that testimony only casts suspicion on the transaction in question here, and suggests the possibility of wrong in it. Because a party has done wrong at one time and in one transaction, it does not necessarily follow that he has done like wrong at other times and in other transactions. Suppose in each of the twenty-one cases specified in the testimony the Government had filed a separate bill making the patentee and Montgomery parties defendant, and charging in each, as here, a prior unlawful agreement, and in twenty of them the patentee and Montgomery had each answered, denying under oath any prior agreement, while in the twenty-first they had likewise answered, admitting in full as charged the making of such an unlawful agreement, would the admission in the one case be adjudged, in the face of the denial under oath in the other twenty, clear, full and convincing proof that in those cases likewise there was a prior, unlawful agreement? And yet such admission of both patentee and Montgomery would be stronger and more satisfactory evidence than the separate testimony of the patentee. And this is all the testimony which in any manner points to wrong in this transaction. Surely, this does not come up to the rule so well established, as to the necessary proof in a case like this."

Besides, as tending to refute any such inference, is the fact, which is undisputed, that the Dunbar and Roche claims were disposed of to the company

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in 1904 for \$1,300 apiece. The company also paid Stephen A. and Alice La Raut more than \$100 apiece for their claims, and that Ethel M. Lewis and Lucy La Raut have been paid more than \$100 on their claims and still own them, shows conclusively that as to those claims there was no agreement that they were to have only \$100 apiece for their claims.

ARE THE ENTRIES IN THE COMPANY'S
BOOK'S EVIDENCE OF FRAUD?

The Government's counsel argue that the entries in the books of the company corroborate the theory of the Government that these entrymen and entry women were hired to take the claims, and were to be paid \$100 apiece for their services.

Copies of the entries in the books appear at pages 160-165 of the printed record. These entries show payment to the parties of \$100 each, but these payments are explained by Mr. Booth (pp. 174-175) and Mr. Dunbar (pp. 193-195), and by Lucy La Raut (pp. 96-100-105) and by Ethel La Raut (p. 121).

This testimony shows that the amounts paid the La Rauts were advances made as they needed the money. As to the Jordan and Brumbaugh claims, they were charged with the \$100 because they sold their claims for that amount over and above what they had cost them, in advances made by the company.

The testimony shows conclusively that these accounts were separate accounts, and were kept in that manner so that the company could tell at any time

the amounts that had been advanced when final settlement was made with the entrymen (pp. 171-172-188-199).

The books afford the strongest kind of evidence against the theory of the Government, because it is highly improbable if the officers and agents of the company had entered into a vile conspiracy to defraud the Government out of these lands, that they would have spread the matter out on the books of the company and thus made public record of the transaction. If there had been any conscious purpose of perpetrating a fraud, they would have made no entries in the books showing the details of the transaction with each entryman and entry woman, such as were made in these entries.

PAYMENT OF TAXES BY THE COMPANY.

It was stipulated that the Booth-Kelly Lumber Company at all times since the execution of the patents to the entries involved in this case has paid taxes on this land and has exercised dominion and control over the same (p. 165). This applies more particularly to the La Raut claims, because the Jordan claim was bought soon after he proved up.

It is argued that the fact that the company has paid taxes on the land shows it to be the absolute owner, and is inconsistent with the claim that it was holding the title as security. We are unable to agree with counsel. The company had the title, and while it was holding it as security, it would naturally list them with its other lands and pay the taxes for the

benefit of the parties, as well as its own protection, and be reimbursed when the lands were finally redeemed or sold.

FAILURE OF GOVERNMENT TO CALL STEPHEN LA RAUT AND ALICE LA RAUT.

It will be noticed by the court that the Government did not call Stephen La Raut or Alice La Raut. The testimony shows they were in Alberta, Canada, but the Government could easily have obtained their testimony. The failure to do so gives rise to the presumption that they would not uphold the contentions of the Government.

The Government instead of calling them, called Mrs. Applestone, a daughter of Alice La Raut, who testified in a more or less uncertain way of conversations held some time in 1902, about eight years before she testified, in which her mother told her she had taken a timber claim for Robert Booth, while Robert Booth, in answer to this statement, not only denies it emphatically (p. 168), but swears that he never talked to Stephen A. La Raut or his wife about their claims until 1908 (p. 168), and he explains why he came to talk to them at that time (pp. 168-169). He also testified that the Applestone woman told him about that time that she did not know anything of consequence about the claims; that she had heard her mother say or talk about what she would do with some of the funds when they sold their claims (p. 168). So that in addition to the presumption that the testimony of Stephen A. La Raut and Alice, his

wife, would have been against the Government, this evidence shows that they would have testified the same as Lucy and Ethel have testified in the case.

**GOVERNMENT CALLED LUCY LA RAUT AND
ETHEL M. LA RAUT, AND IS BOUND BY
THEIR TESTIMONY.**

The Government called Lucy La Raut and Ethel M. La Raut, now Ethel M. Lewis. By so doing it made them its own witnesses, vouched for their veracity, and is bound by their testimony. No one will claim that their testimony lends any credence whatever to the theory of the Government in this case, but does show honesty and good faith, not only as to their claims, but as to those of Stephen A. and Alice La Raut.

**GOVERNMENT ADMITS EVIDENCE IS CIR-
CUMSTANTIAL.**

The Government's counsel admitted in their brief in the court below that the evidence upon which a cancellation of these patents is asked is mainly circumstantial. Indeed, there is no direct evidence at all of fraud as to the La Raut patents. As said by the trial court, the direct evidence is all the other way. So the question is presented to this court whether the direct and positive evidence of all the parties to the alleged fraud, showing that there was no fraud, is to prevail or whether it is to be overcome by inferences to be drawn from circumstances which in a fertile imagination might be considered more or less suspicious.

**CIRCUMSTANCES RELIED UPON PERFECTLY
CONSISTENT WITH HONESTY AND GOOD
FAITH.**

The circumstances to which the Government's counsel point as showing fraud are perfectly consistent with good faith and honesty in the transactions.

Counsel for the Government assert that upon cruising the land and finding these claims subject to entry the company would naturally turn to relatives and employees and offer them compensation for their services in taking the claims. Is it not just as fair an inference and just as natural to suppose that Mr. Booth and Mr. Kelly, when informed that these lands were subject to entry, recalled the requests often made to them by these entrymen and entry women to locate them on timber claims, and that they wanted to give them a chance to take claims for their own benefit?

Counsel for the Government say the company paid all expenses; attended to securing witnesses, notifying the entrymen of the date of final proof, and attended to getting the witnesses present, and furnished the money to pay for the land.

There is nothing in all of that inconsistent with perfect good faith. The La Raut women were inexperienced persons, and the others were working for the company in one capacity and another, and could not take the time. So somebody familiar with the procedure in the Land Office had to look after the claims for them, take them on to the land and to the

Land Office, and notify them of the day set for making final proof and look after it for them, and the company having advanced the money, it naturally felt an interest in seeing that everything required was properly done.

Counsel say the entrymen paid no attention to their claims. Jordan paid close enough attention to his to sell it to the company soon after he proved up. The La Rauts paid no particular attention to theirs, because they were depending on Robert Booth to look after theirs for them, pay the taxes, etc. What else could they do with wild timber land? The title was in the name of the Booth-Kelly Lumber Company. The land would naturally be assessed to the company, and it would pay the taxes along with its other property to protect its lieus upon it.

Counsel say the entries in the books would have been different if the claims were taken for the benefit of the entrymen and not for the benefit of the company. We are unable to see anything in these entries to justify any inference of fraud, but quite the reverse. These claims were entered in the books differently from all others. Where the lands were purchased outright by the company, there was simply a charge to stumpage account of the amount paid out for the land, but here there is a separate account under the name of each entryman, with an itemized statement of all the expenditures, from which it could be easily and readily ascertained how much the company had advanced on each of the claims. Whether the entries in the books are made

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in the way a bookkeeper should have made them or not, they are plain enough to anyone who wants to understand them.

Counsel say the keeping of the deeds off the records was for the purpose of concealment, and to aid in carrying out the fraud. The evidence is that the first deeds were made to Robert A. Booth as security under an arrangement between him and the La Rauts (pp. 168-169). He had every faith in them and they had every faith in him. As between them there was no need of recording the deeds. The most natural thing under the circumstances would be not to record them. If the company had wanted to conceal the fact of its holding the title to the property it would not have listed it among its assets and paid taxes on it, as counsel for the Government admits it did do, nor would the entries that were made in the books ever have been made. These deeds doubtless would not have been recorded when they were but for the fact that there had been a change in the management of the company. Mr. Booth had retired, and Mr. George H. Kelly had become its manager. Stephen A. La Raut was about to be sued for debt and judgments obtained against him, and it then became necessary for the company to record his deed, and while recording his the others were recorded (pp. 169-170).

The land fraud investigations had nothing to do with the deeds being recorded or not recorded. In fact, this very matter was investigated by the Government at that time, as shown by the testimony of

Brumbaugh and Jordan, and the books inspected by special agents of the Land Department, and they found nothing to justify proceeding against any of the parties. If so, why did they not indict Booth and Kelly for subornation of perjury or conspiracy or both? There has been no concealment at any time, but the company has at all times made full disclosures about these transactions, laid the books open to the Government agents time and again, because it had nothing to conceal.

Counsel claim that because the entrymen made no inquiries about the property or its value, and their indifference in the matter shows that they had no further interest in the land. This, however, is explained by the fact that they depended on Robert Booth to look after the matter for them, and to keep them advised about it. He had told them that when the company sold its holdings in that locality he would see that theirs was put in and sold along with the company's land, or if the company decided to log off the timber it would take the timber on theirs also and pay them stumpage (p. 168). So there was nothing to do but wait for the coming of one or the other of these contingencies.

COMMENTS ON OPINION OF COURT BELOW.

The court below in its opinion in this case concedes that the oral testimony is conflicting and leaves the inference that if the case rested on that alone, the evidence would be insufficient to justify setting aside the patents (p. 281). Some credence is

given by the court below to the testimony of Mrs. Applestone. We have heretofore referred to her testimony and submit that it is not sufficiently reliable to justify the court in accepting a statement as to what her mother said to her about the entries some eight years before she testified. We do not dispute but that she may have talked to her mother about taking a claim or having taken a claim, but it is highly improbable, in view of all the facts, that her mother said to her that she had taken a claim for Robert Booth; for such was not the fact, nor is it likely if her mother and her husband had been taking claims for Robert Booth, which they knew would be in violation of the law of the land, that her mother would have been telling her about it. We have already called attention to the testimony of Mr. Booth in which he says he talked to Mrs. Applestone about this matter at the time she was in Portland during his trial and that she told him at that time that she did not know anything of consequence about the claims, but that her mother had been talking to her about what she would do with some of the funds when they sold their claims (p. 168), and this is not denied by Mrs. Applestone.

It is worthy of note in this connection that the three managers of the Booth-Kelly Lumber Company in succession, namely, Robert A. Booth, George H. Kelly and A. C. Dixon, the present manager, testified as to the La Raut claims that the equitable title to the land was in the entrymen and entry women and that they made no claim to the land or

the title thereto, but held the deeds merely as security, and this is substantiated by the testimony of Ethel La Raut, Lucy La Raut, John F. Kelly and Harry Dunbar, in all seven witnesses testifying positively to that effect, while there is no positive evidence to the contrary. The only suggestion of anything to the contrary, so far as the testimony of witnesses is concerned, is the testimony of Mrs. Applestone, a daughter of Alice La Raut, one of the entry women, then a mere girl, who testified that she heard her mother say "she had taken a claim for Robert Booth." She does not testify that she heard anything from Robert Booth or that her mother ever quoted him in the matter. It was simply a talk in the family which might have had reference to the fact that Robert Booth had promised to assist her some day in realizing upon her claim. To cancel the La Raut patents means that the testimony of the seven witnesses above named must be discredited, and that the girl, who could not possibly know the facts except from hearsay, is to be believed.

Another point we wish to emphasize in this connection is that the entire arrangement as to the taking up of the La Raut claims was made between Robert A. Booth and Ethel La Raut, Ethel La Raut having made the arrangement, first for herself and then for her sister, Lucy La Raut, and then for her brother, Stephen La Raut, and his wife, Alice La Raut. (See testimony Robert A. Booth, pp. 166-167; Ethel La Raut, now Ethel Lewis, pp. 110-119.) Consequently they are the only persons who could know

what the arrangement was. They have both testified that the claims were not taken for Robert Booth, but for themselves and for their own benefit. If Mrs. Alice La Raut ever stated she had taken a claim for Robert Booth she did not know what the transaction was and did not know what she was talking about. We do not believe she ever made such a statement.

If full credence is to be given to Mrs. Applestone's testimony, it would only affect her mother's claim, as she testified over and over again that her mother was the only one of them she talked to about the claims. This statement of her mother's to her, if true, would not affect the other claims or justify any court in assuming that the other claims were taken in the same way. It is suggested by the court below in its opinion that neither Stephen La Raut nor Alice La Raut were called to contradict Mrs. Applestone's testimony. There was nothing in her testimony for Stephen La Raut to contradict, for she did not testify to any conversation with him on the subject. We suggest in this connection that it would have made the Government's case much more satisfactory if the Government had called Mrs. Alice La Raut as a witness to testify as to the facts concerning her entry instead of calling her daughter to testify to a conversation which she claims to have had with her about it some eight years before. We need not remind this court of the fallibility of human memory, nor of the uncertainties and danger of relying upon that kind of testimony.

The court below, in its opinion, attaches importance to the record evidence in the case consisting of the entries made about these claims in the books of the company. It may be that these entries unexplained lend some credence to the theory of the Government, but in the light of the explanations made of them by Mr. Booth and Mr. Dunbar, the book-keeper, it seems to us that they are wholly insufficient upon which to base a decree for the cancellation of the patents. On this point the learned trial judge in his opinion filed in this case, commenting on this feature of the case, says:

“The fact that the money was advanced by the company and the manner in which the books were kept, as well as the circumstances surrounding the entry, are suspicious, and standing alone tend strongly to support the Government’s contention, but with the explanation given by the witnesses, they are not sufficient to overcome the respect due to the patents or the presumption which attended their issuance” (p. 22).

It is admitted that these entries in the books do not comport with the facts as to these claims for it appears in evidence that each of these entrymen were paid more than the amounts shown by these accounts, and it also appears at the foot of these entries that the accounts are not closed (p. 162). Is it possible that the entries in the books should, in a court of equity, control the actual facts as the undisputed testimony shows them to be?

We suggest this further point as to these entries in the books: The entrymen proved up and obtained their final receipts on the 7th and 8th days of May, 1902 (pp. 24-75), and the payment of the hundred dollars was made as shown by the books, July 31, 1902 (p. 161). How can these payments be evidence of any agreement to pay them the \$100.00, prior to the time they made their initial filings? The agreement to pay them \$100.00 apiece for their claims, in addition to the advances made by the company, if such is the fact, might well have been made after the final receipts were obtained so far as these entries in the books are concerned. In other words, the entries in the books are perfectly consistent with the theory of the defendant company, that whatever arrangement or agreement was made under which they were paid the \$100.00 apiece, was made after they had obtained the final receipts and therefore not a violation of the Timber and Stone Act.

The Government must prove the agreement to have been made before the entrymen made their initial filings, in order to maintain this suit. The entries in the books do not tend to prove it; nor is there any evidence in the case to prove it except the testimony of Edward Jordan, which as we have shown, is utterly unworthy of belief, and that only applies to his own claim.

AS TO THE VALUE OF THE CLAIMS.

The court below attaches importance to the fact that the claims of Stephen A. La Raut and his wife were, at the time they were settled with, worth \$4,000 to \$5,000. We submit that the value of these claims is greatly over-estimated. An isolated timber claim in a region like that has no market value. The only thing that gives it any market value is that some large concern with large holdings in the vicinity is paying a certain price per acre or per thousand feet stumpage. It is very easy to say that timber is worth so much per thousand feet stumpage, and that there is so many million feet on the tract, and hence that it is worth the amount thus shown, but it is quite another matter to sell it for that amount or to get that amount out of it. There is a sharp conflict in the testimony as to the value of these claims.

John F. Kelly testified, (p. 223), that at the time they bought the Jordan and Brumbaugh claims, which was in 1902, that they paid them all their claims were worth at that time, and Mr. Booth testifies to substantially the same thing (pp. 171-176).

Concerning this matter Mr. Booth testified on cross-examination ((pp. 175-176) as follows:

“Q. Why did you conclude this arrangement with Stephen La Raut?

A. I never concluded it with Stephen La Raut, Mr. George Kelly concluded it.

Q. Mr. George Kelly understood it?

A. Understood what?

Q. That Stephen had some claim on the land?

A. He understood that the claim belonged to Stephen La Raut, like all the other claims that had been assigned to me as mortgages.

Q. What was Stephen La Raut's claim worth?

A. I do not know what they were worth in there. Of course, I have my own idea that they were worth very little.

Q. What is your idea?

A. I would not want to buy it for over fifteen or twenty cents per thousand feet. In fact, I did not care to buy at all in there, as the operations of the company in there for a number of years have been at a loss, and there is no market for their timber, and it has been so for a number of years, the company has been operating at a loss.

Q. Yet Stephen La Raut's claim would be estimated at anywhere in the neighborhood of two thousand dollars in value?

A. It would not come anywhere near that.

Q. It would not?

A. No.

Q. Do you remember the Roche and Dunbar claims in there?

A. I do not.

Q. Do you know anything about them?

A. Well, I do not know; my recollection so far as that was concerned is only in a general way, that they are all in the same group of claims. As I said they were taken on the fringe

around the land that we purchased, and they were a lower grade than the average grade of claims that we secured.

Q. Claims now in there are worth something more than they were in 1904, are they not?

A. Yes.

Q. How much per cent?

A. Well, I have not had anything to do with the purchasing since I went out.

Q. You kept a close tab on the company's business and you must have formed some idea of the value of timber, what is your estimate?

A. I have given you my idea of value.

Q. What was the value, or what is the value in excess of what it was in 1904?

A. Well, since 1904, I would say that it has raised in a general way fifty per cent, probably more than that.

Q. Now omitting the idea of time, from the claim of S. A. La Raut, you paid him on July 31st, 1902, \$100.00 over and above the amount the land had cost, and on February 3rd, 1910, the company paid him \$50.00 more for the land, making \$150.00 for this claim, and I notice in 1904, in this same locality that you paid Dunbar and Roche \$1300.00 each for their claims, —now in what way were you helping La Raut there more than you were other people, that being the state of the records?

A. We helped him to the extent of the money that he received for his claims.

Q. \$150.00?

A. Whatever the records show, and if he had held his claim as I desired him to do, and

recommended him to do, he might have gotten a great deal more out of it.

Q. How is it that you were willing to pay Roche and Dunbar each \$1300.00 for their claims, and you were only willing to give Stephen La Raut, whom you wanted to help, \$550.00, or \$560.00 for his claim, counting the Government price?

A. I did not buy Mr. La Raut's claim.

Q. I understand that you informed Mr. George Kelly, and he bought Mr. La Raut's claim?

A. I informed him as to what I had said to Mr. La Raut, and that I had advised him not to sell. I had nothing to do with the purchase of the claim, and I never knew until this case came up, what was paid to Dunbar and Roche for their claims."

In regard to the amount paid Stephen A. La Raut and his wife, for their claims, George H. Kelly, the then manager of the company, testified as follows (p. 233) :

"Q. Now state what you said about closing out with Stephen La Raut and his wife when they went to Canada, state the circumstances.

A. Well, as I remember it was along about the last of 1909, or the first of 1910, that Stephen La Raut was yard foreman at Saginaw, and I was up there one day, and he said he had concluded to quit and was going to Canada or to Alberta to take a homestead and wanted to sell his claim. I did not want to lose him, and I tried to talk him out of it. He said he wanted to get out of it what was com-

ing to him on the claim. Well, about a month or two later than that he came to the office, as I recollect it, it was just during the annual meeting, or may be a day or two later, and we were very busy, and I took him over to our office and he said he had fully made up his mind to quit Saginaw and was going to Canada to get him a homestead and he wanted to clean up his homestead; I asked him what he wanted out of it, and he said that if he could get enough to get him over there he would be satisfied. I went to R. A. Booth and told him what Stephen wanted, and Booth said well, if he is determined to go, you had just as well settle with him, and let him go, so I went back and asked him what he thought he wanted to close the matter up, and he said fifty dollars, and I paid him and took his receipt for it.

Q. When was that, do you say?

A. Well, it was between the 1st and 5th of February, I think. I know it was just the time of our annual meeting, and Mr. Dixon had just been elected manager or was just going to be, I am not quite certain which it was, anyway Dixon said he didn't want to have anything to do with it, that he was busy and was new in the business and asked me to settle it with him, and I remember the fact that I helped Dixon settle a good many unfinished matters and that was how I came to close this matter up. I think it was the day after Dixon was elected manager."

And on cross-examination, at page 234, he testified that they paid Stephen La Raut and his wife

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all they asked for the claim and that he was not in the habit of giving a man more than he asked for a thing.

The Government called in rebuttal as to the value of these claims, George Sorenson (p. 255), T. B. Newhatsen (p. 257), M. A. Martin (p. 260), and C. W. Mead (p. 264). None of these witnesses appeared ever to have been on these claims or to know anything about the quantity or quality of the timber, and their testimony as to the value is of the most general character and of very little consequence as it seems to us in determining the value of the claims in controversy.

COMMENTS AS TO CHANGE MADE IN THE ANSWER OF DEFENDANTS.

The court below attaches some significance to the change that was made in the answer of the defendants shown by a stipulation at page 18 of the Record. In the original answer, the Booth-Kelly Lumber Company claimed to be the legal and equitable owners of all the La Raut claims, when it should have been alleged in the answer that it was the legal and equitable owner of the Stephen A. and Alice La Raut claims and the legal owner of the Ethel La Raut and Lucy La Raut claims, and that they were still the equitable owners thereof.

The way that mistake came to be made in the original answer is explained by the testimony of Mr. A. C. Dixon (pp. 239, 240, 241). We quote from his testimony, as follows (p. 239) :

"A. As to how the answer came to be written up in the way it is, I do not know anything about it, I did not see it until the time that I signed it. I understand that it was prepared in Portland by you, and it was brought to me by Mr. Woodcock, who told me that it was necessary that it should be signed. As I remember it, I suggested that Mr. Dunbar might sign it, as he was an officer of the company, being secretary and treasurer, and I was not a member of the board of directors, that I was only manager. He said that it was fixed for my signature and without paying attention to the details, or discussing the various points embodied in it, I signed it supposing it was more a matter of form in order to comply with the requirements necessary to get the case for the trial."

The counsel who prepared the answer in this case, resided at Portland, while the principal office of the company is at Eugene, 125 miles distant, and was under a misapprehension as to the condition of the La Raut claims. The error was one easily made on the part of the counsel in supposing that the company had settled with all of the La Rauts, when in fact it had only settled with Stephen A. La Raut and his wife, leaving Ethel and Lucy still the equitable owners of their claims.

The mistake was not discovered until the local counsel of the company and the officers of the company came to Portland for the purpose of taking the testimony in the case. The matter was then promptly called to the attention of the counsel rep-

Page Seventy—

resenting the Government and a stipulation entered into amending the answer as shown on page 18 of the Record, as already referred to. The stipulation was made and filed before any testimony whatever had been taken in the case so that the Government was not misled or prejudiced thereby in any way, and we submit that the case of the defendants ought not to be prejudiced by a mistake of their counsel in preparing the original answer.

Finally the court below says in its opinion:

"These facts and circumstances, while perhaps they do not amount to a demonstration of the truth of the allegations of the bill, result in a very decided preponderance of the evidence in favor of that conclusion" (p. 284). Thus admitting in effect after giving full credence to the facts relied upon by the Government to make out its case, and without making any allowance for the explanations made by the defendants as to those facts, there was still some doubt as to the truth of the allegations of the bill, and instead of resolving the doubt in favor of the defendants it proceeded to resolve it in favor of the Government. In this we submit the learned court erred.

NO MOTIVE SHOWN FOR FRAUDULENT CONSPIRACY CHARGED IN BILL.

It is an established fact in this case that Mr. Kelly, the land agent, and Mr. Booth, the then manager of the Booth-Kelly Lumber Company, knew it was against the law to have parties take claims

for them or to make any agreement with them to buy any of their claims, and knowing as they did, the illegality of such an arrangement as the Government claims was made in this case and that they would be incurring criminal liability, not only for subornation of perjury, but also for violating the conspiracy statutes, would they have made such an agreement as is alleged in the bill of complaint when the evidence shows that they were buying land in that locality for less than these claims would cost (pp. 219-223).

It is shown in Kelly's testimony set forth at the pages cited that they were buying claims in that locality along about that time at prices ranging from \$300.00 to \$800.00 per claim of 160 acres, some even lower than that and some higher, but a fair average would not greatly exceed \$550.00 per claim. Now is it probable that any sane man or set of men would, even if criminally inclined, enter into an agreement which would subject them to criminal prosecution and forfeiture of the purchase money, in order to get title to timber claims which they could purchase for less money and without incurring any liability or risk whatever. Such a thing is preposterous. Men do not take such chances, if at all, unless there is a fair prospect of large gain or some strong incentive, which was wholly lacking here. We submit that the whole evidence shows, that the real motive of the company and its officers in reference to these claims, was to favor old and faithful employes of the company, or relatives of

Mr. Booth's, so as to enable them to exercise their rights to take timber claims, and make out of them what they could for themselves.

STANDING OF BOOTH-KELLY LUMBER CO.

The Booth-Kelly Lumber Company is one of the largest timber land owners in the State of Oregon. It has large milling plants at Saginaw, Springfield, Coburg and Wendling, in said State. Its lands have been acquired in the main, not for speculative purposes, but to supply the milling plants with timber in its business as manufacturers of lumber. It has never been accused of land frauds of any kind. Its record is exceptionally clear in that respect. During the land fraud investigations in Oregon, its affairs were carefully looked into by the Government agents, and if they had found evidence of fraudulent acquisition of timber lands the company and its officers would have been indicted and prosecuted. The only indictment against any of them was against Robert A. Booth, and he was tried and acquitted by a jury of his peers. To say that a company with such a record would, by its officers and agents, enter into the fraudulent and criminal conspiracy set forth in the bill or that the La Rauts, who are honest, hardworking people, would go into such a conspiracy is highly improbable.

CONCLUSION.

This case involves more than the lands or the purchase money advanced by the company. The decision of the court below casts a slur upon the

good names of the officers of the company engaged in these transactions, whose characters and reputations are and have been otherwise unimpeachable, and we appeal to this great tribunal to vindicate their good names from any intentional wrong-doing as to these claims, by reversing the decree of the court below and ordering the bill of complaint dismissed.

All of which is respectfully submitted,

A. C. WOODCOCK, and

ALBERT H. TANNER,

Solicitors for Appellants.

JOHN VAN ZANTE,

Of Counsel.



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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1914.

No. 258.

BOOTH-KELLY LUMBER COMPANY, STEPHEN A.
LA RAUT, ALICE LA RAUT, ETHEL M. LA RAUT,
AND LUCY LA RAUT, APPELLANTS,

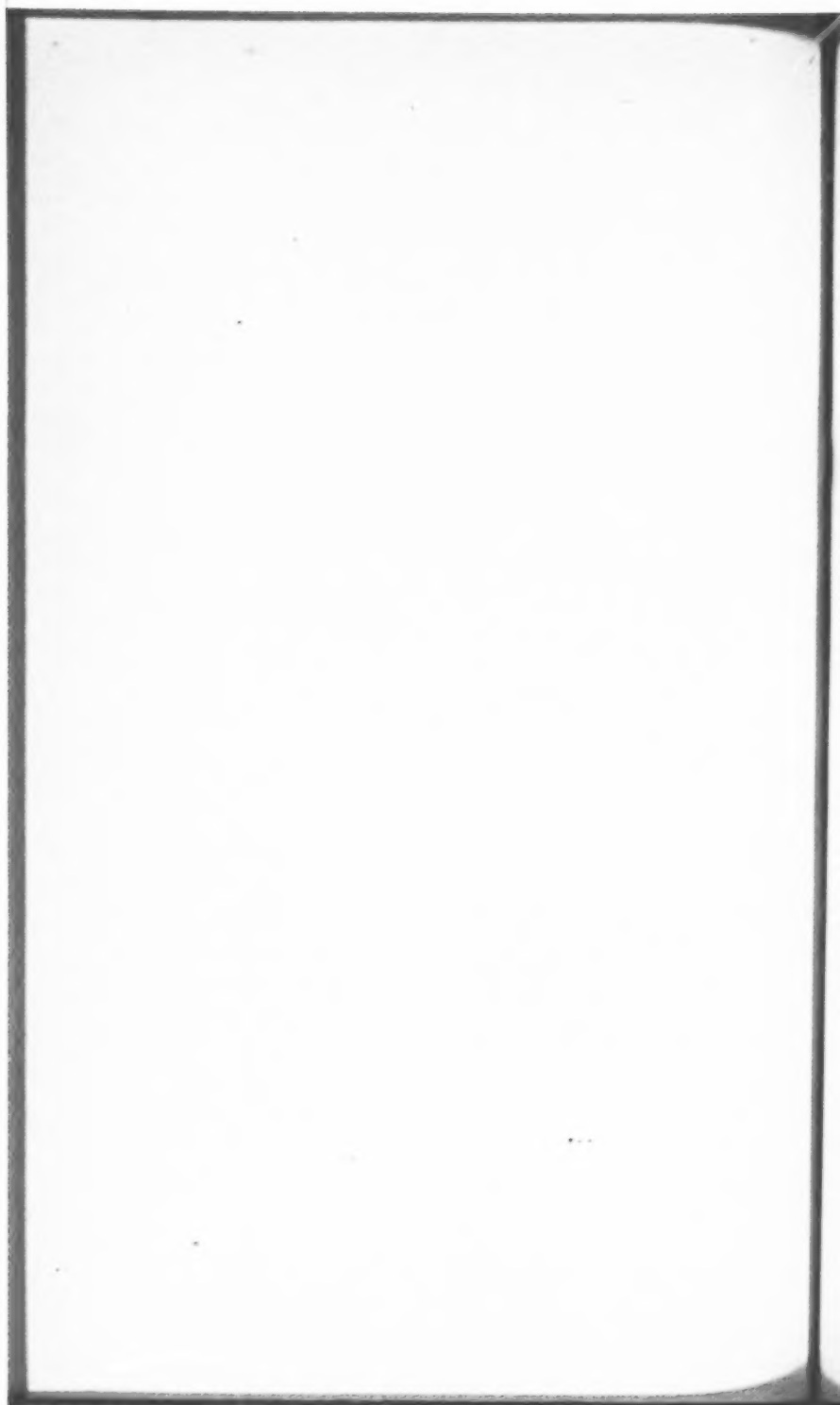
vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

REPLY BRIEF FOR THE APPELLANTS.

ALBERT H. TANNER,
Solicitor for Appellants.



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We have thought it proper to file a brief in reply in order to call the attention of the court to some inaccuracies in the statements contained in the Government's brief, and also some glaring misstatements of the facts contained in the opinion of the Circuit Court of Appeals.

On page 4 of the Government's brief it is stated that the patents issued August 30, 1904, at the request of John F. Kelly were delivered to one Frank E. Alley "for the company," citing page 134 of the record.

The stipulation there referred to is as follows:

"It is stipulated and agreed by and between the parties hereto that patents for the lands embraced in timber and stone entries of Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut respectively were delivered to Frank E. Alley on November 9, 1904, by the officers of the Land Office, and that Alley secured the same at the request of John F. Kelly."

There is no ground in this stipulation for the assumption that the patents were delivered to Alley "for the company." It was the duty of the Land Office to deliver them to the parties entitled to them, and the presumption would be that they were delivered to Alley for them and not "for the company."

On page 5 of Government's brief it is stated that the company paid the Land Office fees and the purchase price.

This is not correct. The company advanced or loaned the entrymen the money, but they made the payments themselves. Indeed, the Government officials would not and could not recognize the company. It would deal with the individual entrymen.

There is a stipulation at page 78 of the record showing how the payments were made. It shows that drafts were drawn in favor of each entryman and that they either cashed them at the bank and paid over the money to the receiver or indorsed the drafts to him.

On page 30 of Government's brief is a statement that the answer was amended as to payments of the Land Office fees, etc., and reference is made to page 78 of the record. No such amendment was made to the answer. The denial that the company had paid those amounts was perfectly true.

It had furnished the money to the entrymen, but they did the paying. The only amendment to the answer is the one shown on page 18 of the record.

We now call attention to some glaring errors made by the Circuit Court of Appeals in the opinion filed in this case as to the facts.

The court says in the last paragraph, on page 281, that Jordan and the La Rauts made their applications for timber claims "at the same time." That is not correct. Stephen and Alice La Raut filed February 7, 1902 (R., 56). Jordan filed February 14, 1902 (R., 26), and Ethel and Lucy La Raut filed February 17, 1902 (R., 43-46).

The opinion further states, page 282, that "the company paid the purchase price of the land and all fees," which, as we have already shown, is not correct, for these payments were made by the entrymen themselves, but with money furnished them by the company (R., 78).

The opinion further states, on page 282, that "at the time when those deeds were executed (first deeds) the entrymen received the sum of \$100." There is no proof to sustain such a statement except as to Jordan. The testimony of Booth and the La Raut women is to the effect that they do not remember whether the \$100 was paid before or after the deeds were executed. The Government's counsel in their brief are much more fair, for they say, at page 20, that the \$100 was paid "at or about" the time the first deeds were given.

The opinion says that the first deeds were destroyed in 1904 or 1905, "at about the time of the investigation by the Government of land frauds in Oregon."

There is nothing in the testimony to warrant that statement. Booth and the La Raut women all testify that they do not remember when the first deeds were returned. The strong probability is that it was done about the time the new deeds were taken.

The opinion states, on page 283, referring to the facts as significant:

"One of these is the cotemporaneous payment to Jordan and the four members of the La Raut family of the identical sum of \$100 at the time when their deeds were taken."

This statement is not correct. The payments were not cotemporaneous. Jordan was paid on August 7, 1902 (R., 160). Lucy La Raut was paid on August 12, 1902 (R., 161), and Stephen and his wife and Ethel were paid on July 31, 1902 (R., 161).

They were not paid the identical sum of \$100 each. Stephen La Raut was paid \$134.50 (R., 161) and the payments were not made at the time the deeds were taken, except as to the Jordan deed (R., 96-120).

The opinion further states, at page 283:

"When the second deeds were obtained from Ethel and Lucy in 1907 they were each paid \$25."

There is no proof to support that statement. The payment of the \$25 had no relation to the making of the second deeds (R., 108-115).

The opinion states on page 283 that when deeds "were obtained from Stephen La Raut and his wife in 1910 they were each paid \$50."

That statement is not correct; no deeds were obtained from them in 1910. All they gave the company at that time were receipts in full (R., 277).

The opinion states on page 284, referring to the amendment of the answer, "Dixon testified that he was fully advised of the facts and that he had stated the facts to the attorneys who prepared the answer. He admitted that the answer was read to him, but he testified that without paying attention to the details or discussing the various points embodied in it, he had signed it supposing it was a mere matter of form."

This statement is not fair nor is it borne out by the testimony. Dixon does not testify that he stated all the facts to the attorneys who prepared the answer. On the contrary he says that most of his talk about it was with Mr. Woodcock, but that Mr. Tanner drew the answer; nor does he admit anywhere in his testimony that the answer was read to him (R., 239-241). On the contrary the inference from what he says is that it was not read to him. Judge Gilbert who wrote the opinion of the Circuit Court of Appeals was so prejudiced against Mr. Booth, that although he testified positively that the first deeds from the La Rauts were made to him personally and he gives the reason why they were so made, the opinion of the court is made to say that "Jordan's deed and *probably* all of the deeds were executed to the company." Thus refusing to give any credence to Mr. Booth's testimony although direct and positive and nothing whatever in the testimony to the contrary.

On page 283, the opinion states that neither "Ethel La Raut nor Lucy La Raut explained why she received the \$100. Yet, Ethel La Raut testified on that point as follows (R., 121):

"Q. How did Mr. Booth come to pay you the \$100 that you just explained?

"A. Well, he gave me money many times when I needed it, when I asked him for money he would have advanced it to me knowing that I needed money. I do not recall.

"Q. And the payment of the Twenty-five dollars was in the same way, was it?

"A. The same way.

"Q. You were depending on him?

"A. Yes that was not all the money he has given me.

"Q. You were depending on him to keep account of the money?

"A. Certainly.

"Q. And when you finally settled up to adjust the matter between you?

"A. Certainly.

"Q. Has there ever been any settlement as to the balance?

"A. No, sir.

"Q. Or anything of that kind?

"A. No, sir."

Mr. Booth testified on that point when asked on cross-examination why he advanced them the \$100 apiece, that he did it to aid them just as he had done at other times (R., 175).

It is claimed by counsel for the Government that as to the Jordan entry there was a superfluity of proof to support the findings of the courts below, we are unable to agree to this. There is no preponderance of proof in favor of the Government as to that patent. Conceding that Jordan and Kelly are equally entitled to credit, which is a violent presumption in view of Jordan's position in the matter, and there is no preponderance. Jordan swears one way as to when the agreement was made and Kelly swears the other way. There is nothing to corroborate Jordan. Hence we claim, as matter of law, that the necessary preponderance of the proof was lacking and that it was error to find in favor of the Government.

We submit as a further reason why the finding was erroneous as to the Jordan claim that Kelly, one of the parties to the alleged agreement, swore positively that he made no agreement before the final receipt was issued, because he knew that such an agreement would be against the law and he did not intend to violate the law, and that the court ought not to imply an agreement against such evidence. But if the court shall decline to examine the evidence as to the Jordan patent and make its own findings in regard thereto, as we hope it will, we do most earnestly request the court to make an independent examination of the testimony as to the La Raut patents, as we are thoroughly convinced that an injustice will be done Ethel and Lucy La Raut as well as the lumber company, if the patents are canceled.

Why should the patents to Ethel and Lucy La Raut be canceled when they still own the land and the lumber company admits that they own it? The lumber company is irrevocably committed on that proposition (R., 170, 232, 233, 239). It could not go back on it if it would. These young women will hold and own the land if the patents are not canceled in this suit. If the company should refuse to reconvey to them, they could compel a reconveyance in court upon payment of the money advanced. Then why cancel the patents and take from them the land which the Government intended they should have when they complied with the law?

They are not bound by the entries in the company's books, nor are their rights to be affected by what the company did or failed to do in the matter so long as they themselves were acting in good faith.

Government's counsel say in their brief, page 31, that the difference of opinion between the district judge and the Circuit Court of Appeals was due to a failure on the part of the district judge to subject Booth's testimony to a careful analysis and to an undue exaggeration of the burden resting on the Government.

We submit that the difference of opinion was due to the absolute failure of the Circuit Court of Appeals to pay any attention whatever to the direct and positive testimony of five or six witnesses, two of them called by the Government, showing that the entries were made in good faith, and to an attempt to make out a case for cancellation of the patents involved by inferences and conclusions not warranted by the testimony in the case.

Respectfully submitted,

ALBERT H. TANNER,
Of Solicitors for Appellants.

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

BOOTH - KELLY LUMBER COMPANY, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, appellants,	} No. 258.
<p style="text-align: center;"><i>v.</i></p> THE UNITED STATES.	

*APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.*

BRIEF FOR THE UNITED STATES.

STATEMENT.

References to opinions of the courts below:

District Court (R., 20);
Circuit Court of Appeals (R., 278);
203 Fed., 423.

The bill assailed five patents, issued under the timber and stone act to the four individual appellants, and one Edward Jordan, all of whom were joined as defendants with the Booth-Kelly Lumber Company. The substance of its allegations is that, in pursuance of a conspiracy to defraud the Government of the

titles, the officers and agents of the company induced the individuals to make the filings and entries and convey to the company; that the company paid all of the expenses, including the land office fees and Government price, and that the individuals acted in the matter merely as its tools, with no purpose to acquire title for themselves and with no interest other than to serve the company and to earn such moneys as the company paid them for their services. In its answer, joined in by all of the individuals except Jordan (who suffered default), the company, besides traversing the allegations of fraud, and therein specifically denying, among other things, that any part of the expenses was paid by it (R., 12), set up affirmatively (R., 14) that it had purchased all of the lands in controversy in good faith, for valuable considerations, relying upon the final receipts and patents and without notice of any fraud or infirmity in the titles, etc.

This answer was sworn to by A. C. Dixon, the manager of the company (R., 17) and was filed September 21, 1910 (*id.*). The case was next referred to an examiner to take testimony and report to the court (R., 18). On December 19, 1910—the day when the hearings before the examiner began—the company, through a stipulation (R., 18), shifted its position very materially in respect of the two tracts entered by Ethel M. and Lucy LaRaut, by averring that the absolute deeds which these entrywomen had made to the company were in reality mortgages intended “to secure the payment of certain advances

made and to be made to them by said company, to enable them to enter and pay for said land, and for other purposes."

On final hearing the District Court concluded that the entry of Jordan was fraudulent as charged and the patent subject to cancellation. For reasons which we shall take occasion to discuss below, it reached a different conclusion in respect of the other four entries. The decree therefore canceled the Jordan patent, but dismissed the bill as to the others. Opinion (R., 20); decree (R., 23).

The Circuit Court of Appeals, after a painstaking and able examination of the evidence, found that all of the entries were fraudulent as charged and directed a decree canceling all of the patents. Opinion (R., 278); 203 Fed., 423; decree (R., 285).

No questions of law are involved which require argument or citation. The questions of fact were considered with commendable care and impartiality by the learned court below and we believe that this court, upon comparison of the record with the opinion, will discover that there is little to add and nothing to criticize. Our task is little else than to assist this court in finding and collating the important evidence.

THE EVIDENCE.

General facts.

The company was engaged, in a large way, in the lumber business and in the acquisition of timber to supply its mills, or, possibly, in part, to hold on

speculation. It owned and operated plants at four different places. (R., 165, 166, 215.)

R. A. Booth was its manager until 1907. (R., 165.) Between January, 1902, and January, 1903, J. H. Booth was its secretary and also receiver of the United States land office at Roseburg, where the entries were made. (R., 165.) John F. Kelly was the vice president and, subject to the directions of the manager, attended to the purchase of lands. (R., 215.) George Kelly was a director in charge of sawmills. Later (1907-1909) he was manager (R., 231), in which latter office he was succeeded by A. C. Dixon, who verified the answer. (R., 238.) When the entries in question were made all the applicants, except Lucy La Raut, and Alice, the wife of Stephen La Raut, were employees of the company. (R., 86, 93, 135.) R. A. Booth was married to a sister of Stephen, Ethel, and Lucy La Raut. (R., 93, 166.)

The entries were made in 1902. Stephen and Alice La Raut filed on February 7, Jordan February 14, Ethel and Lucy La Raut February 17. The final entries were made on May 7 and 8. The patents were issued August 3, 1904, and at the request of John F. Kelly were delivered to one Frank E. Alley for the company (R., 134).

The law required the applicant to show by his initial affidavit that he had personally inspected the land. It was also necessary in each case to pay land-office fees amounting to about \$10 and a purchase price of about \$400. Between the time of filing and the time of final proof and purchase it was necessary

to advertise a notice in a local newspaper and pay the proprietor. To visit the lands, and make trips to and from the land office, other expenses were necessarily incurred in each case for railway tickets, horse hire, board, lodging, etc.

The applicants knew nothing of the land to begin with. John F. Kelly selected it for them. In order that they might make the required oaths, each visited his tract, guided by an escort provided by the company. The company paid *all* the bills. (R., 78.) It paid the expenses incident to the trips to the land and to and from the Roseburg land office, it paid the fees of the land officers, it arranged for the publications and paid for them all (\$10 or \$8 each) on the same day (R., 76, 163); it paid the purchase price.

In July, 1902, all the entrymen executed and delivered deeds of conveyance to the company or to R. A. Booth, and each received from the company \$100. (R., 98, 108, 112, 160, 174.) The deed of Jordan is in evidence (R., 130)—a warranty deed to the company, executed July 22, 1902, before H. A. Dunbar, the bookkeeper and, later, secretary of the company, who testified in its behalf. This deed was withheld from record until September 6, 1907. (R., 131.)

The four La Raut deeds, which, according to the testimony of R. A. Booth, were made out to him (R., 174), were never recorded but were retained by him until the latter part of 1904 or early 1905, when the Oregon land fraud investigations and prosecutions were in progress, and were then *destroyed* (R., 180, 97).

The La Rauts made other deeds in 1907. These are all warranty deeds to the company. Those of Stephen and Alice (R., 132, 133) were executed before Dunbar, March 4, 1907, and filed for record on that day. The deeds of Lucy and Ethel were executed before Dunbar September 6, 1907, and filed on the 7th (R., 98, 118). Lucy and Ethel each received \$25 more (R., 107, 115), and Stephen and wife \$50 each (R., 170, 233). See book account (R., 163).

That the company treated all these transactions as its own from the very beginning, and regarded them as closed when the first deeds were delivered, is evidenced conclusively by its books of account to which we would invite particular attention, in view of its present claim that in no case was there a prior agreement and that the deeds of the La Rauts were intended as mortgages. On pages 160 *et seq.* of the record will be found transcripts of some of the books in so far as they relate to these five entries and also the entries of Roche, Dunbar, and Brumbaugh, which were made at the same time and upon which we will offer comment later. There was a special account for each entryman, a special account of the various expenses attending the taking up of these "Brumbaugh Land Claims" other than the expense of the general cruise and the purchase price, and a general "stumpage" account. The transcript contains all that is shown on the company's books appertaining to the eight entries mentioned, and no more. (R., 160.) The account for "stumpage" was a large one—a general account in which were all disburse-

ments made by the company, year after year, in and about the cruising and acquisition of its timber lands. (R., 203, 245, 251.) The dates in the "Brumbaugh Land Claims" account are not the dates on which the expenses were incurred, but the dates on which the items were carried into that account from the company's cash book or memoranda. (See R., 247.) These items were not distributed into the individual accounts of the entrymen, but were posted *en bloc* (\$301.03) in the general "stumpage" ledger account on December 31, 1902.

The testimony of Dunbar (R., 248 *et seq.*) shows that the transcripts of the "Brumbaugh Land Claims" and "stumpage" accounts in the record (R., 163) were taken from the journal; that in the ledger account of "stumpage" the totals of the La Raut accounts were lumped opposite a description of the lands without mention of their names (R., 245, 246); and that the total of the "Brumbaugh Land Claims" account (\$301.03) was merged *without itemization* into a lump charge of \$26,236.93, for "cruising" during the year 1902 (R., 246). This stumpage account covered about 150,000 acres of land (R., 197).

The individual accounts of the five entrymen defendants were absolutely closed July 31, 1902, except Jordan's, which was closed in October, 1902 (R., 160, 161, 248). Each entryman was charged with \$400, the purchase price of his tract, on May 8, 1902, the date when the purchase was made, and with \$100, the amount paid him, for his service in making

the entry, on July 31, 1902 (Jordan, August 7), soon after his deed had been secured. "Stumpage" is charged in each case with the sum of these two items, on July 31 (in Jordan's case, October 23), and there the account ends.

These contemporaneous book entries flatly and conclusively contradict the propositions that the company's moneys were merely being *lent* to assist the entrymen to acquire the land for themselves and that the deeds from the La Rauts were mere mortgages. If such had been the purpose of the company, it is needless to suggest, the expenses evidenced by the "Brumbaugh Land Claims" account would have been also charged, in due proportions, to the accounts of the entrymen, instead of being treated as exclusively the expenses of the company, and neither those items, nor the items in the four La Raut accounts would have been charged to "stumpage" or entered in the general "stumpage" account until the land had actually been purchased by the company. Furthermore, the taxes on these lands were assessed to and paid by the company along with the taxes on its other holdings (R., 204, 228). They were never segregated or charged to any of the individuals.

On the other hand, the applicants and patentees never saw the lands entered by them except when Brumbaugh took them to the land before the entries were made. They never made any effort to dispose of them, never inquired the value thereof or the amount of timber thereon or took any interest whatever therein; never inquired as to the expense of the

entries or whether taxes were being paid thereon, notwithstanding they were always in poor circumstances, and they, as well as Dunbar, Roche, and Brumbaugh, received at or about the time of the entries \$100 apiece—a sum which bore no relation to the expenses, and could only have been advanced as a payment for service rendered.

The amounts of timber on the lands in controversy were estimated, in feet, as follows (R. 276):

	Company.	Government.
Ethel La Raut	7, 700, 000	10, 250, 000
Lucy La Raut	3, 600, 000	4, 100, 000
Stephen La Raut	6, 350, 000	7, 000, 000
Alice La Raut	6, 750, 000	7, 300, 000
Edward Jordan	9, 400, 000	14, 000, 000

The Government cruise was designed to ascertain approximate quantities.

In 1902 the timber was worth from 25 to 50 cents per thousand feet, and in 1910 from 75 cents to \$1 (R., 255-265), according to the plaintiff's witnesses. The figures given by the company were lower.

Entries of land in the same locality were made by Brumbaugh, the cruiser (R., 79, 218); Dunbar, the head bookkeeper (notary public) and, later, secretary (R., 185); and Roche, the assistant bookkeeper working under Dunbar (R., 208). These entries were made at the same time as those in controversy and in similar circumstances. While Dunbar and Roche, aided by leading questions, naturally enough deny that they acted for the company (they are still

its old and trusted servants, who took an active part as its agents in the transactions complained of), the testimony of these witnesses, when read in the light of the book accounts, is very far from being helpful to the company. Brumbaugh's land was next to Dunbar's (R., 152). He filed on it at the request of John Kelly, who told him "to pick out a good one," and promised to furnish the money (R., 152), pay all the expenses, and give him \$100 (R., 153). Somebody—presumably Kelly—attended to the advertisement, and Dunbar handed Brumbaugh the money for the land office. He deeded the land to the company about two years later (*ib.*) and got the hundred dollars (R., 154). His testimony is positive, direct, and unshaken, and no motive for falsifying is attributable to him. Dunbar (R., 206) and possibly John Kelly (R., 210) suggested to Roche that he take a claim. He went to inspect the land with Jordan and Brumbaugh and they acted as his witnesses (R., 206). He and Brumbaugh were Jordan's witnesses (R., 30, 32) and, at Dunbar's or Kelly's instructions (R., 211), he took the money to pay for Jordan's expenses and land-office charges as well as his own (R., 210). He deeded to the company, he thinks, in 1904 and received, all told, \$1,300, paid by giving credit to his account (R., 207). The company, however, carried the land in its stumpage account from 1902, at which time he received a credit of \$500 (which included the Government price and \$100), and "there was a kind of an understanding that the land would revert to them" (R., 208). He expected to make a deed as soon as

he obtained title (*ib.*). He can not explain just why the \$100 was allowed him in 1902 (R., 209), nor why the expenses (except purchase price) were charged to the company alone (R., 211, 212), nor why his land was carried as property of the company when he still claimed it and "wanted to sell it" (R., 212), nor why he was credited with \$800 more in 1904. He was receiving only \$100 per month as salary (R., 213).

Dunbar (R., 185 *et seq.*) claims that he asked John Kelly to find him a tract. He went to the land with Ethel and Lucy La Raut and one Robinson, who, with Brumbaugh, acted as his witness at final proof (R., 186). This Robinson, by the way, was also advertised as one of the witnesses for those two La Raut claims (R., 37, 46), and there is an item in the "Brumbaugh Land Claims" account showing that the company paid him money. Dunbar says he drew the money for his claim and charged himself in his account with the company (R., 187). He deeded in November, 1904 (*ib.*). He received \$1,300 by taking credit in his account (*ib.*). When he proved up he charged himself with \$400, the purchase price only, and credited himself with \$500. He does not explain why he came to take the additional \$100, which bore no relation to the actual expenses. Note the following from his examination (R., 189):

Q. How did you happen to pay them [La Rauts] one hundred dollars apiece on July 31, 1902?

A. It was paid over to them by authority of some one, I do not remember who.

Q. You do not remember who told you?

A. I presume it was the manager; it would be somebody in authority.

Q. Did you pay yourself one hundred dollars on your claim at that time?

A. No, sir.

Q. Did you have any transaction with regard to your claim at that time with the company?

A. I charged myself with four hundred dollars at the time I proved up.

Q. Did you credit yourself with anything?

A. I did.

Q. How much?

A. Five hundred dollars.

Q. Why did you credit yourself with five hundred dollars?

A. Because I had some expenses, and I was making a loan from the company.

Q. What did you take one hundred more than you used up for?

A. Simply to offset my expenses, and the amount is there charged.

Q. You got one hundred dollars at that time more than your expenses?

A. My account shows what I got.

Q. You got one hundred dollars?

A. Yes.

Q. You gave a deed at that time?

A. No, sir.

Q. Did you not give a deed to the Booth-Kelly Lumber Company?

A. No, sir.

Q. You did not give a deed at the same time as these other people?

A. No, sir.

Q. But you got one hundred dollars?

A. Yes.

Q. What authority did you have for taking one hundred dollars more than the land cost you?

A. From somebody who had authority.

Q. Who gave you authority to take that money?

A. I presume Mr. John Kelly.

Q. What did he give you the hundred dollars for?

A. To offset the charge that I had made against my account.

Q. Yes; you were offsetting it by one hundred dollars over what you had charged; what I want to know is about this hundred dollars.

A. Well, it was my own account, and I had my own arrangement.

Q. You borrowed one hundred dollars?

A. Yes; if you want to consider it that way.

Q. What security did you give?

A. I gave no security.

Q. Why did you not charge it to your account, and not charge it to the land claim?

A. I did charge four hundred dollars to my account, and I charged five hundred dollars to stumpage account.

Q. The five hundred dollars you were paid?

A. Yes.

Q. You credited stumpage?

A. I charged stumpage and credited my own account.

Q. And you made one hundred dollars out of the transaction?

A. Yes. This five hundred dollars was simply a loan on the land.

Q. What did you give the company for that loan?

A. Nothing.

Q. You did not deed them the land?

A. No.

Q. They had no security?

A. No.

Q. Not until 1904 when you made the deed?

A. No.

Q. You carried it to the stumpage account in 1902?

A. Yes.

Q. Why did you carry it into the stumpage account?

A. Simply because it was a loan on the land.

Q. You did not turn the land over at that time?

A. No, I did not; that was in 1904.

We will not attempt complete analysis of the testimony of this witness. It needs to be read to be appreciated. Its explanations do not explain, and its constant evasions do not deceive.

The accounts of Roche, Dunbar, and Brumbaugh (R., 161, 162) are like the other five, except in that, as these persons were on salaries, their accounts were kept open. All three were charged with \$400 on May 8, 1902, the date of their entries of land. Brumbaugh was credited with \$500 on September 23, 1904, and the same amount was charged to stumpage on that date.

On July 31, 1902, \$500 each was credited to Roche and Dunbar and corresponding charges made to stumpage; and on December 31, 1904, there was an additional credit to each of \$800, also credited to stumpage. Dunbar insists (R., 194, 199, *et passim*) that the sums of \$500 in his own account and Roche's were *loans* pure and simple. He says (*id.*) there was an agreement with Kelly that they should have such a loan, but there was no agreement to sell to the company when the loan was made (R., 195). He does not explain why exactly \$100 was taken in his and in all the other cases; why any loan should be charged to the land in any case for more than actual expenses; why the *actual expenses* shown in the "Brumbaugh Land Claims" account were never charged in any case to the entryman; why his land and the others were taken into the general stumpage account before sales were agreed on, etc. In short, his testimony, by its defects and evasions, merely serves to corroborate the books. He says that R. A. Booth told him that he, Booth, "was to be responsible" for the La Raut claims and directed him to keep their accounts separate (R., 188), but he does not explain why the expenses incident to those claims were never charged to their accounts, nor does he explain the \$100 payments, nor the charges to "stumpage." On cross-examination he was forced to admit that in other cases, where the company purchased, the accounts were kept precisely as in the cases of the La Rauts (R., 248-251; 253-254). Be it noted here that this witness, after testifying that the transcript of the

stumpage account which the company furnished was taken from the ledger (R., 203, 204), later, upon the ledger itself being called for, unwillingly conceded that the transcript had been taken from the journal, which showed the *names* of the entrymen, and that in the ledger the names did not appear (R., 246). The obvious explanation is that the ledger disproved the proposition that the La Raut transactions were separately identified as loan transactions.

Jordan's entry.

Jordan testified that he went into the enterprise at the request of John F. Kelly, who said that he would pay for the land and all expenses and give him \$100 (R., 136). Kelly told him he "could get lots of fellows to do it," but that he would give Jordan "a show" (R., 149). He told Jordan "not to say anything about it, that there was not much harm in it, but anyhow he did not make his business public, or something to that effect" (R., 148). Kelly explained to Jordan what he would have to do and that Roche would go with him that night with the money (R. 143). Jordan went to the land with Roche; Brumbaugh was there waiting for them (Jordan had had no communication with him before); they looked at the land, and then all three went to Roseburg to do their filing (R. 136). He does not know who attended to the advertisement, but he himself had nothing to do with it. Later he went to Roseburg again with Roche and Brumbaugh to prove up—thinks Kelly notified him of the time

(*id.*). While they were in the land office J. H. Booth, the receiver (brother of R. A. Booth and the secretary of the company), said "stand back awhile, the inspector was there," so they went back of the main office and waited a half hour or so until Booth called them. The money to pay for the land was furnished by the company and carried by Roche, who also furnished the money for expenses in going to and remaining at Roseburg (R., 137). Jordan handed the final receipt to Kelly (R., 146). Soon after the entry, Dunbar, in his capacity of notary public, and Kelly came to Coburg, where Jordan was, and procured his deed conveying to the company. Jordan was then paid \$65, the remainder of the \$100 going to pay for a colt which he had previously obtained from Kelly (R., 138, 147). Afterwards, when "the land-fraud trial" (grand jury proceedings, R., 140) was on, Kelly summoned Jordan to Portland (R., 138) and cautioned him to "keep his mouth shut" (R., 139).

Jordan's testimony is clear, direct, and circumstantial. It was strengthened in cross-examination. The record does not show that he had any motive to swear falsely. Though Kelly denied that there was a prior agreement, and advanced the theory that before entry the company merely assisted Jordan and "lent" him the money for his own benefit, Kelly's testimony, in nearly every other respect corroborates Jordan's, as does also the testimony of Brumbaugh and Roche.

The books of the company show that on May 8, 1902, the day after the entry, Jordan was charged with the purchase price, \$400; that on August 7, 1902, he was charged with \$100 more (this was a few days after his wife had acknowledged the deed, R., 131, 160); and that none of the other expenses was charged against him, but that all these, including the cost of advertisement, were paid by the company and charged to "stumpage" (R., 163).

He was impecunious, working for a small salary (R., 148), but there is no pretense that he was asked to give a mortgage or other security for the repayment of these so-called "loans."

The La Raut entries.

The La Rauts were all very hard up—"poor relations" of R. A. Booth. Two of them, Stephen and Ethel, were in the company's employ at small wages.

The theory that the company puts forward to explain its close connection with their entries is elaborated by R. A. Booth, a business man of large experience and evidently of more than ordinary intelligence. The burden of his story is that, owing to his benevolent interest in their welfare, and his anxiety to improve their condition, he assisted them with his advice, and with loans of the company's money, and with the service of its paid employees, in the making of their entries; that there never was any agreement or understanding on their part that they would convey to the company until 1910, when Stephen and his wife, on the eve of their departure

to Canada to find a new home, sold out for \$50 each (R., 183), and that even now, the other two, Lucy and Ethel, are the beneficial owners of the tracts they entered, subject to liens securing the moneys which the company advanced. The deeds made by the La Rauts in 1902 (afterwards destroyed), and the deeds made by them in 1907, were all "mortgages."

Ethel and Lucy La Raut were called by the Government, but they were hostile witnesses, and their interest and hostility, as well as the manner of their cross-examination, will not be overlooked when the value of their testimony is weighed against the book accounts and the whole mass of circumstances incriminating Booth and his company. Stephen and his wife were not called, nor does the company offer any excuse for its failure to secure their depositions.

Ethel and Stephen were employed by the Booth-Kelly Lumber Company (R., 117-183), and the former boarded at the home of the latter, while Lucy lived with her parents near the town of Wilbur, about 12 miles from Roseburg (85-97). Ethel and Lucy went together to examine the lands they were to enter, accompanied by Dunbar and Brumbaugh. Ethel says she had previously spoken to Booth about taking up a claim (R., 109), and that he had promised to advance the necessary money (R., 110), and do the same thing for Lucy, Stephen, and Alice (R., 119). The two latter visited the lands together in the company of Brumbaugh, who testified that the four La Rauts brought him the "numbers" (descriptions)

which had been written by John Kelly, and that at Kelly's request he showed them the lands (R., 80).

R. A. Booth admitted that he had made arrangements with Ethel whereby he would furnish the money necessary to purchase the lands, defray all expenses, and carry the claims until such time as they could be disposed of (R., 167).

The final certificates were issued to Ethel on May 9, 1902 (R., 45), to Lucy on May 8 (R., 55), and to Stephen and Alice on May 7 (R., 66-75); and soon afterwards all of the parties made deeds for the lands either to Booth or to the lumber company. Booth testified that these deeds were made to him personally in order to secure the money that had been advanced (R., 169); Lucy recalls that hers had some relation to "the land-fraud agitation" (R., 97). Later, these deeds were destroyed and others given to the company (R., 180). The later deeds were executed by Stephen and his wife March 4, 1907 (R., 132-133), and by Lucy and Ethel September 6, 1907 (R., 98-118).

At or about the time the first deeds were given, each of the parties was paid \$100. Lucy and Ethel testified that they received that sum (R., 98, 112-115), and Mrs. M. S. Applestone, the daughter of Alice La Raut by a former husband, testified that her mother and stepfather were paid such a sum (R., 84-90). Booth admitted that these payments had been made, but claimed that they were merely advancements (R., 174), and he denied that there was any understanding or agreement with any of the parties

that the entries were made for him or for the lumber company (R., 167).

Mrs. Applestone testified that she was at her mother's home in the spring of 1902 and at that time her mother, stepfather, and Ethel had been out to see the land. She talked especially with her mother who said that she had taken up a claim for Mr. Booth (R., 83), for which she was to be paid \$100. Witness knew that her mother had received the \$100 because she had said so. Moreover, witness saw the money. She was there also at the time that her mother, her stepfather, and Ethel went to Roseburg to make final proof and she saw the questions that they were to answer but could not understand it because the questions were already answered (R., 84). Her mother said that the papers had been sent by Robert Booth (R., 85). Her mother and stepfather were very poor at the time and the latter worked for the Booth-Kelly Lumber Company. In addition to paying her mother \$100, Booth was to pay all expenses (R., 86).

On cross-examination the testimony of this witness was much strengthened. She said that her mother and stepfather had examined the land before witness went to their home.

Q. Well, were you there while they were taking the claims, when they went out to see them, and so on, or did you come after that?

A. I came the day after they came from the land.

Q. Had they been living on the land?

A. No; they had been away one day.

Q. They had been up to the land before you got there?

A. Yes; before I got there.

Q. And you talked with your mother about taking up the timber claim?

A. Yes, sir.

Q. And she told you that she was going to take up a claim, did she?

A. She told me she had taken one.

Q. And that your stepfather, Mr. La Raut, had also taken a claim?

A. Yes, sir.

Q. And that they were going to Roseburg to prove up—did she tell you about that?

A. I was there at the time they went.

* * * * *

Q. You do not know anything about why they took up their timber claims or anything about it?

A. I do know why—my mother told me.

Q. I mean, outside of what your mother told you?

A. No, I do not know. My stepfather took up his claim for the same reason that my mother did.

Q. Who told you why he took up his claim—did he ever tell you himself, or was it your mother?

A. I do not recall whether he did or my mother did.

Q. Is it not a fact that you are testifying now entirely from what your mother told you about it?

A. Yes, I suppose, and what I knew.

Q. Do you know whether Robert Booth ever talked to your mother or your father about it at all?

A. I do not.

Q. You do not know who it was who suggested to them that they take a timber claim do you?

A. Yes, I do.

Q. Well, where did you get that information from?

A. I got it from my mother.

Q. What did your mother tell you?

A. She told me that Robert had asked them to take up a claim.

Q. That Robert Booth had asked her?

A. Had asked her and my stepfather and Ethel, they were the ones that were there.

Q. Do you mean to say that your mother told you Robert Booth had talked to her?

A. He did not talk to her personally that I know.

Q. Your mother did not tell you that Robert Booth had ever talked to her personally about it, did she?

A. No, she did not.

Q. Now, you say that you saw this \$100 that your mother had there?

A. Yes, sir.

* * * * *

Q. Was there more than \$100 of it—did you see the \$100 that your stepfather had, too?

A. No.

Q. You do not know whether he had a \$100 or not?

A. Yes.

Q. How do you know?

A. Because my mother said he had and he said he had.

Q. Did he tell you about where he had gotten it?

A. Yes, he talked about it.

Lucy La Raut says she took up the claim because Ethel told her that she could do so. She was accompanied by her sister, Ethel, and Harry Dunbar, the company's bookkeeper. She did not know why the latter accompanied her. She had nothing to do with publishing the notice of final proof, as all that was attended to by Robert Booth (R., 94). Her sister, Ethel, and Dunbar also went with her at the time she made proof. Her expenses were funished partly by her father¹ (\$25 or \$30) and partly by Mr. Booth and the latter furnished the money, \$2.50 per acre, to pay for the land (R., 95-6). She further testified that a short time after making proof she gave a deed either to Booth or to the company. Later, in 1907, she made another deed. She did not know why there were two deeds. She received \$100 about the time she made the first deed but did not recall how long it was after that that the second one was made, but, in answer to a question as to whether it was about the time of the land-fraud agitation, she said, "It might have been." She denied that she knew before she went to make the entry that she was to be paid \$100, but admitted that Booth was to advance the money and that she received \$100 in

¹ Stephen La Raut was repaid \$34.50 and the amount charged to stumpage, July 31, 1902. (R., 161.)

addition to the expenses. September 6, 1907, she made a fee simple deed to the company (R., 98).

Through leading questions on cross examination this unwilling witness for the Government said that her first deed was given to Booth as security for the money which he had advanced; that it was made as a mortgage and her second deed was made at Booth's request for the purpose of continuing the same arrangement. After saying repeatedly that she had made the entry for her own benefit and had not promised Mr. Booth or anyone else to sell him the land, she testified as follows:

Q. Had you made any contract or signed any paper or made any agreement whatever before you took up the claim, or before you proved up on it, to sell it to anybody else?

A. No, sir.

Q. Or to sell any interest in it, or the timber thereon?

A. Only this way—no, I had not made any contract or anything like that.

Q. You had not agreed to sell either the land or the timber, had you?

A. No, I had not agreed to do it—no.

* * * * *

Q. If anybody had come to you and wanted to buy your claim from you would you have felt at liberty to sell it?

A. Yes, I suppose I would have talked to Mr. Booth and asked his advice, because I was depending on him.

This witness said that she had never been back to the land; did not pay any taxes on it; did not know

who had paid the taxes (R., 103); that some time later (about 1908) Booth had given her \$25 additional; that she did not know where any of the money to pay for the land or the expenses came from (R., 104), but she supposed it was all from Mr. Booth. She did not know what the expenses were; never had any statement or account of the money at all; had never given Booth any note or security for the money he had advanced her (R., 105).

Ethel La Raut's testimony was substantially to the same effect as that of her sister. She did not know who paid her the \$100 (R., 112); did not remember when the first deed was destroyed; did not even know whether it was destroyed, but thought it was; did not know why it was given back to her. She depended for everything upon Mr. Booth. The second deed, the one made in 1907, was given for the same purpose that the first one had been given, as security for money (R., 113). She had no idea what the expenses were for all the different things; had never paid any taxes on the land. She did not remember just when Booth paid her the \$25, but it was after she had received the \$100; that he paid it to her because she wanted it.

Q. You wanted twenty-five dollars?

A. I did not say that I wanted twenty-five dollars.

Q. That is what he gave you?

A. I asked for money and he gave me twenty-five dollars.

Q. Did you tell Mr. Booth how much you wanted?

A. No.

Q. How did he happen to give it to you?

A. I just told you.

Q. You asked him for money and he loaned you twenty-five dollars?

A. I asked for money and he gave it to me.

Q. Nothing was said about this timber claim?

A. No.

(R., 115.)

Booth said that he told Kelly (John F.) to look out for good claims for the La Rauts; that Dunbar was given instructions to do all that was necessary to carry out Booth's understanding with them (R., 167); that he had advanced considerable funds to them (R., 169), to secure which he took deeds running to himself personally. Booth further testified that he never had any conversation with Stephen and the latter's wife about the entries until 1908 (R., 168), and he repeated that statement later (R., 176), notwithstanding which he advanced the money that was used to pay for the lands entered by them and had received deeds running to himself. Moreover, he later testified that Stephen La Raut had come to him concerning the matter when Booth was about to retire as manager of the company in 1907 (R., 179). He further stated that the claims were carried separately on the company's books, so that he could readily tell what amounts had been advanced for each person (R., 171).

This testimony, of course, contradicts the books themselves, since, as we have already shown, the

only sums charged against any of the entrymen were the \$400 paid for the land and the \$100 given to each individual. All other expenses were charged to the "Brumbaugh Land Claims," which related not only to the entries made by the La Rauts but to a number of others. Moreover, when additional sums were paid to the parties later on, \$25 each to Lucy and Ethel and \$50 to Stephen and his wife, they were not charged therewith in the company's books; but those amounts were charged against stumpage for the very lands that these people had entered. (R., 163.)

Booth endeavored to make it appear that he was interested in the La Raut family, having married into it; that they were poor and he desired to help them, and for that reason had advanced the money for the making of these entries. Yet he never advised any of them on the value of the land; and when Stephen and his wife applied to him for final payment, in 1910, he turned them over to Kelly, the manager (R., 179), and allowed the latter to pay them only \$50 additional, thus making \$550 for claims containing something like six or seven million feet of timber each (R., 276), worth from 50 cents to \$1 per thousand!

The record clearly shows that all of the money advanced to the La Rauts was the company's money. There is nothing whatever except Booth's testimony and his self-serving declarations repeated by others

to show that he assumed the obligation. It is clear that he never assumed it. On the contrary, when the deeds were given to the company in 1907, these lands had long been carried on the company's books and the proper charges made against stumpage, and during the entire period the company paid taxes on the lands. The individuals were not charged with these taxes; they were not charged with their personal expenses or with the office fees attendant upon the making of entries of this sort, but stumpage was charged for these expenses—not stumpage belonging to Mr. Booth, but the company's stumpage. Booth's attempted explanation of the reason for taking two deeds does not explain. His testimony does not agree with that of his "active force," John F. Kelly, or that of the manager who succeeded him, George H. Kelly. Booth said that he had given Ethel and Lucy the \$25 additional to the \$100 first paid them, whereas George H. Kelly testified that their payment was made during his administration. When asked whether or not he paid it on the order of R. A. Booth or on his own account, he said he had paid it on his own authority (R., 236). Respecting the location of the La Rauts upon the lands which they entered, Booth testified that he had given no instructions, as that was under the direction of Mr. Kelly (John F.) (R., 168), while the latter said that he did not have anything to do with the La Raut claims.

Q. None of them?

A. No, sir; only I think that I may have told Mr. Dunbar, who went up with the La Raut girls, that Mr. Brumbaugh would take them over the land.

As pointed out in the opinion of the Circuit Court of Appeals, the change made in the answer of the defendants when the Government began to take its testimony is most significant. The original sworn answer had been on file three months. It denied that the expenses attending the making of the entries or purchases, including the payment of the money or the fees of the register and receiver, or any other expenses, were paid or borne by the defendant corporation, yet when the Government commenced taking testimony the answer was made to say that the money for the payment of the purchase price, including the land office fees, publication fees, etc., were furnished by the Booth-Kelly Lumber Company. (R., 78.) The bill of complaint was clear in its charges as to the alleged fraud in acquiring the lands, and the answer was complete in every detail. It even went so far as to allege that the charges made in the bill had been the subject of investigation by officials of the Interior Department. Another allegation of the answer was that the lumber company had purchased the lands, relying upon the patents, and had paid the four La Rauts \$600 each, yet the answer was amended to allege that the claims of Lucy and Ethel M. La Raut had never been purchased but that the company took the deeds only as mortgages.

ARGUMENT.

In view of the evidence, and the comments we have made in stating it, little need be added in the way of argument.

So far as the Jordan entry is concerned, there was a superfluity of proof to sustain the common finding of the two lower courts, and the finding is therefore conclusive.

The difference of opinion concerning the La Raut entries is due to the failure of the district judge to subject Booth's testimony to a careful analysis (which would have revealed its absurdity), and to an undue exaggeration of the burden resting on the Government in its efforts to obtain justice in cases of this character. The reasoning of the district judge is summed up in the following extract from his opinion (R., 22):

The fact that the money was advanced by the company and the manner in which the books were kept, as well as the circumstances surrounding the entry, are suspicious and, standing alone, tend strongly to support the Government's contention, but with the explanation given by the witnesses they are not sufficient to overcome the respect due to the patents or the presumption which attended their issuance.

From this it is evident that had it not been for "the respect due to the patents and the presumption which attended their issuance," the district judge would not have accepted the Booth explanation. In other words, the inferences which would have outweighed

and destroyed Booth's direct testimony in any ordinary case were discarded in this one because the integrity of patents was involved; Booth was allowed to prevail, not because of the presumption of innocence, but because of the respect due to patents. But it can not be, even in a suit of this kind, that a collection of circumstances which, standing unopposed, must suffice to produce conviction in any reasonable mind, must be cast aside merely because a daring and deeply interested witness undertakes to explain them away by his "direct" testimony. There is no magic in direct testimony in this any more than in other cases. It must be tested by the same standards in all; and, in all alike, if devoid of the element of credibility, it is worthless. Booth's testimony is not only inconsistent with the convincing circumstances and with the unimpeachable testimony of Mrs. Applestone; it is inconsistent with itself. His conduct disproves his alleged motive. If his motive had been to assist the La Rauts to buy and hold the land for investment, he would have assisted Stephen and Alice to obtain a fair price on the eve of their departure for Canada to start life anew, when they needed assistance most; he would not have allowed them to be swindled. He would not have authorized and directed the manner of book-keeping that was adopted. He would not have taken absolute deeds for mortgages. And why did he withhold the first deeds from the record and afterwards destroy them?

The reasons which forbid the acceptance of this version are so admirably set forth in the opinion of the Circuit Court of Appeals that we need not rehearse them further here.

The judgment of the three learned circuit judges was based upon a critical examination of the whole record and is abundantly sustained by evidence.

CONCLUSION.

The decree should be affirmed.

Respectfully submitted,

ERNEST KNAEBEL,
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S. W. WILLIAMS,
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APRIL, 1915.



BOOTH-KELLY LUMBER COMPANY *v.* UNITED
STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 258. Argued May 4, 5, 1915.—Decided May 17, 1915.

Judgment of the Circuit Court of Appeal cancelling patents for timber lands on the ground of fraud affirmed, the explanations of the grantee who claimed to be a *bona fide* purchaser without notice failing to escape the effect of incontrovertible facts which showed participation in the fraud.

203 Fed. Rep. 423, affirmed.

THE facts, which involve the validity of patents to land alleged by the United States to have issued as the result of fraud in the entries, are stated in the opinion.

Mr. A. H. Tanner, with whom *Mr. A. C. Woodcock* and *Mr. John Van Zante* were on the brief, for appellant:

There is nothing in the Timber and Stone Act to prevent the entrymen from borrowing the money to pay the ex-

penses of making the entries and to pay the government price for the land. *United States v. Detroit Timber Co.*, 124 Fed. Rep. 393; *Lewis v. Shaw*, 70 Fed. Rep. 289, 294; *Hoover v. Salling*, 110 Fed. Rep. 43, 47; *United States v. Richards*, 149 Fed. Rep. 443; *United States v. Barber Lumber Co.*, 172 Fed. Rep. 948, 960; *United States v. Williamson*, 207 U. S. 425; *United States v. Biggs*, 211 U. S. 507; S. C., 32 L. D. 349; S. C., 34 L. D. 129; *Larson v. Weisbecker*, 1 L. D. 422; *Appeal of Ray*, 6 L. D. 340; *Halling v. Eddy*, 9 L. D. 337; *Church v. Adams*, 37 Oregon, 355; *Wilcox v. John*, 21 California, 267; *Norris v. Heald*, 12 Montana, 282; *James v. Tainter*, 15 Minnesota, 512; *Gross v. Hofeman*, 91 Minnesota, 4; *Fuller v. Hunt*, 48 Iowa, 163.

Upon making his initial filing on a timber claim the entryman may sell or agree to sell the claim, or borrow money on it, or do as he pleases with it without violating any of the provisions of the Timber and Stone Act. *United States v. Williamson*, *supra*; *United States v. Barber Lumber Co.*, 172 Fed. Rep. 948, 960; *United States v. Kettenbach*, 175 Fed. Rep. 463, 466.

A deed, though absolute in form, if intended as security, is a mortgage, and it may be shown to be such by parol evidence. *Peugh v. Davis*, 96 U. S. 332; *Brick v. Brick*, 98 U. S. 514; *Cabrera v. Bank*, 214 U. S. 224, 230; *Russell v. Southard*, 12 How. 139; *Hall v. O'Connell*, 52 Oregon, 164; *Kramer v. Wilson*, 49 Oregon, 333.

When the Government calls the entryman as a witness on its behalf it is bound by his testimony unless overcome by countervailing evidence. *United States v. Barber Lumber Co.*, 172 Fed. Rep. 948, 960; *Choctaw &c. Ry. Co. v. Newton*, 140 Fed. Rep. 225, 250; *United States v. Budd*, 144 U. S. 154.

As to the character of evidence required by a court of equity to set aside a patent attention is called to the following decisions: *United States v. Budd*, 144 U. S.

237 U. S.

Opinion of the Court.

154, 162; *Maxwell Land Grant Case*, 121 U. S. 325, 379; *Colorado Coal Co. v. United States*, 123 U. S. 307, 317; *United States v. Marshall Mining Co.*, 129 U. S. 579, 589; *United States v. Stinson*, 197 U. S. 200, 204; *United States v. Clarke*, 200 U. S. 601, 608.

The declarations of a person after he has parted with the title to real estate are not admissible against his grantee to defeat or destroy the title. *Dodge v. Freedman's Bank*, 93 U. S. 379, 383; *Phillips v. Laughlin*, 99 Maine, 26; *Vrooman v. King*, 36 N. Y. 477.

Mr. Assistant Attorney General Knaebel, with whom *Mr. S. W. Williams* was on the brief, for the United States.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by the United States for the cancellation of five patents for timber lands issued to the four individual appellants and one Jordan, all of whom subsequently conveyed the lands to the Booth-Kelly Lumber Company. The ground of the bill is that the entries were made pursuant to an understanding with the Company for the purpose of conveying the title to it, in fraud of the law. The defendants, except Jordan, answered jointly, denying the fraud, and the Company set up that it was a purchaser for value without notice. The answer was sworn to by the manager of the Company. Afterwards it was amended by agreement so as to allege that the defendants Ethel and Lucy La Raut were still the equitable owners of the land patented to them and that their warranty deeds to the Company were in fact mortgages to secure repayment of advances made to them. The bill was taken for confessed against Jordan, and both courts found for the Government as to the land conveyed by him. The Circuit Court of Appeals, reversing the decree of the Circuit Court, found for the Government as to

the other lands also and ordered a decree for the United States. 203 Fed. Rep. 423.

The issue is purely one of fact upon matters with regard to which the Circuit Court seems to have been prevented from coming to the same conclusion as the Circuit Court of Appeals rather by the presumption in favor of the patents than by its belief in the testimony for the defence. As both courts agreed about Jordan in accordance with his own statement on the stand, we shall reëxamine only the cases of the La Rauts.

The La Rauts were poor, two of them being in the employment of the Company, and they were connected by marriage with the manager of the Company, Booth. As the result of an arrangement with Booth, the nature of which is the point in controversy, by Booth's direction the man who was looking out for the Company's timber purchases reported claims for the La Rauts in the neighborhood of the Company's extensive tracts. Booth directed Dunbar, the bookkeeper of the Company, to see to the furnishing of the money. The La Rauts were taken to inspect the land, so that they might make the necessary affidavits, but beyond that appear to have known nothing and to have made no inquiries at any time. The Company paid their expenses and, through their hands, the land office fees, the cost of publication and the purchase price—all the bills, in short. On May 7 and 8, 1902, they received their certificates of title and in July executed deeds, Booth testifies, to him, certainly either to him or to the Company. At or about the same time each received \$100 just as Jordan did, whose claim was one of the same group and filed at about the same time. These deeds were not recorded, and were destroyed; there is some indication in the evidence that the destruction was at the time of a Government investigation into land frauds, but the proof is not clear. In 1904 the patents were issued and were delivered to one Alley by the Land Office. Alley secured

them at the request to John F. Kelly, vice president of the Company. The Company ever since has paid the taxes and exercised dominion over the land. In 1907 new warranty deeds were executed to the Company by the La Rauts, Ethel and Lucy receiving \$25, seemingly in connection with their conveyances, and later Stephen and his wife \$50, each.

Booth and Ethel La Raut, now Mrs. Lewis, meet the inference naturally to be drawn from the facts thus far stated, by testifying that it was agreed between them that Booth would get timber claims for her and the other three, carry them, and advance the money necessary until they were able to dispose of the property—which would seem to imply that they bought the land for speculation, contrary to their affidavits, but of course denies that they bought for the Company. Both Ethel and Lucy La Raut were called by the Government and both asserted that they bought for themselves, that they still owned the land, and that their deeds were executed only as security for the advances that the Company had made, and there is some corroboration of Booth as to details, but the evidence for the defendants is overborne by the whole course of what was done. A part of it is discredited by the established falsity of similar testimony in the matter of Jordan. The claims of Stephen A. La Raut and Alice La Raut his wife, are disposed of by Mrs. Applestone, daughter of Alice by a former husband, if she is believed. She says that in 1902 her mother told her that she had taken up a claim for Mr. Booth and was to get \$100 and that her step-father took up his claim for the same reason, and that he said that he had received \$100 also. The story is confirmed by the behavior of the parties concerned. For after Stephen La Raut and his wife had made their last deeds to the Company, when, according to Booth, Stephen wanted to go to Canada and to dispose of his land, and applied to Booth, Booth turned him over to Kelly, gave him no information as to the value of the

claims and let him sell them for fifty dollars in addition to the hundred dollars that each had received in 1902, although they clearly were worth a great deal more. Booth's actual conduct is inconsistent with his having entertained a benevolent scheme, and the sum paid is hardly reconcilable with Stephen and his wife being owners of the land.

If the defendants' case fails as to these two claims it hardly can succeed as to the others, for according to them all were taken under a single arrangement for all. And there is further evidence that Booth's account cannot be accepted. We will not encumber the reports with lengthy statement of details, but apart from evidence of other fraudulent claims in the same group with these, the books of the Company which were under Booth's eye tell a different story from his. The ledger showed no names, but the journal account under each name charges them with \$400, the price of the land, and \$100 which each received (with a small additional item for Stephen) and then on July 31, 1902, charges the whole \$500 to stumpage, the general account of the Company for the purchase of land. There the accounts end, and thereafter the lands were carried on the Company's land account. The actual expenses other than the foregoing never were charged to them at all, but all, including the later payments of \$25 and \$50 went without specification into the stumpage account. There are attempts to explain all this by alleged oral statements that Booth held himself responsible, as there is a lame effort also to get rid of the original sworn answer, the inconsistencies of which with the subsequent testimony we have not stated at length. We think it enough to say that the explanations fail to escape the effect of the incontrovertible facts.

Decree affirmed.

MR. JUSTICE McREYNOLDS took no part in the consideration and decision of this case.